EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

85-2135 (1)

Supreme Court, U.S.
FILED
MAY 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

LAVOYD WAYNE "Bill" HARDIN

Petitioner.

v.

GILBERT & COLVIN

Respondent.

PETITION FOR WRIT OR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Lavoyd Wayne "Bill" Hardin Pro-SE
Lavoyd Wayne "Bill" Hardin, pro se
Route 1, Box 127A
DeLeon, Texas 76444
Telephone: (817) 893-2686

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Bankruptcy Court, The United States District Court, and the Fifth Circuit Court is guilty of a conspiracy to Defraud.

2. Whether the petitioner was denied due process of law under the United States Constitution, and the Texas Constitution.

3. Whether the petitioner was denied his homestead, and his business homestead rights under Articie 16, Section 50 and 51 of the Texas Constitution.

4. Whether J. A. Hardin is the only legal owner of this property.

5. Whether the Fifth Circuit Court abused its discretion by not ruling the Bankruptcy Court and the United States District Court denied petitioner and J. A. Hardin the right to have the assistance of counsel for their defense.

6. Whether the Fifth Circuit Court abused its discretion by not ruling the Trustee, the Bankruptcy Judge and the United States District Judge was compelled to accept full tender payment.

7. Whether the Fifth Circuit Court abused its discretion by not ruling the Bankruptcy Judge and the United States District Judge cannot take the State of Texas land as one of the petitioner's assets.

8. Whether the Fifth Circuit Court abused its discretion by not ruling the 220th District Judge Andrew Campbell was prejudice.

9. Whether the Fifth Circuit Court abused its discretion by not ruling the three Orders signed November 7, 1983 was a forgery.

10. Whether St. Clair Newbern, III owes petitioner Eighteen Hundred Dollars.

11. Whether the United States District Court abused its discretion by not going through proper Judicial procedure by holding petitioner and J. A. Hardin's trial on the same day that the bankruptcy court held the trial.

12. Whether the Fifth Circuit Court abused its discretion by not ruling the Bankruptcy Court errored in trying to break petitioner's contract with the Veterans' Land Board of the State of Texas.

13. Whether the Fifth Circuit Court abused its discretion by not ruling that the Bankruptcy Court and the United

States District Court errored in granting to petitioner's ex-wife, Joan M. Hardin Foster, too much damages in a Chapter 13 case and awarding too much money to Gilbert & Colvin for attorney's fees.

14. Whether the Fifth Circuit Court abused its discretion by not ruling the Bankruptcy Judge and the United States District Judge abused their discretion by not ruling that the deed from the Veterans' Land Board to J. A. Hardin was valid and the Bankruptcy Judge, Trustee, and the United States District Judge was compelled to accept full tender payment from petitioner and J. A. Hardin.

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Vernon's Annotated Civil Statutes in Texas Law Article 3996	2

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

No._____

LAVOYD WAYNE "Bill" HARDIN,

Petitioner.

v.

GILBERT & COLVIN

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner, Lavoyd Wayne "Bill" Hardin, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on February 24th, 1986 and March 17th, 1986.

OPINION BELOW

The Fifth Circuit Court of Appeals, Case No. 85-1686 and Case No. 85-1726 involve identical or closely related

questions that this petition covers the two cases (See Rule 19.4).

The Fifth Circuit Court of Appeals dismissed Case No. 85-1686, a copy is attached as Appendix A.

The Fifth Circuit Court of Appeals affirmed U. S. District Court in Case No. 85-1726, a copy is attached as Appendix B.

JURISDICTION

On February 24th, 1986, a panel of three Judges of the Fifth Circuit Court of Appeals dismissed Case No. 85-1686 (See Appendix A.).

On March 17th, 1986, a panel of three Judges of the Fifth Circuit Court of Appeals in Case No. 85-1726, affirmed U. S. District Court's Judgment. (See Appendix B.)

The Jurisdiction of this court is invoked under the provisions of the 5th, 6th and 14th Amendments of the United States Constitution and Article 1, Section 19, Article 5, Section 11, Article 16, Section 49-50 and 51 of the Texas Constitution and Article 3996, Vernon's Annotated Civil Statutes in Texas Law.

CONSTITUTIONAL PROVISION INVOLVED

The United States Constitution Amendments 5, 6 and 14th.

Texas Constitution: Article 1, Section 19; Article 5, Section 11; Article 16, Section 49-50 and 51.

The 5th and 14th Amendments: Nor shall any person . . . be deprived of life, liberty, or property, without due process of law. . . . The 6th Amendment is everyone has the right to have the assistance of counsel for his defense. Article 1, Section 19: Nor shall any person . . . be deprived of life, liberty, or property, without due course of law . . .

Article 5, Section 11: Disqualification of Judges; No Judge shall sit in any case when he shall have been counsel in the case.

Article 16, Section 49: Exemptions From Forced Sales– The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

Article 16, Section 50: No mortgage, trust deed, or other lien on the homestead shall ever be valid.

Article 16, Section 51: Homestead Defined.–provided,

that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family, provided also, that any temporary renting of the homestead shall not change the character of the same.

STATEMENT OF THE CASE

On February 24th, 1986 and March 17th, 1986, a panel of the Fifth Circuit Court of Appeals dismissed and affirmed Case No. 85-1686 and Case No. 85-1726 without taking in consideration the 220th District Court Judge Andrew Campbell of Comanche, Texas was prejudice toward petitioner for firing him as counselor earlier. The Fifth Circuit Court of Appeals did not take into consideration that the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas at Eastland, Texas, ruled that Judge Andrew Campbell abused his discretion by denying petitioner's constitutional right by hearing this case and denying petitioner's right to call witnesses in petitioner's behalf. (584 South Western Reporter, 2d Series, 384) The Fifth Circuit Court did not rule that the Texas Supreme Court could not hear this case until petitioner had his new trial that the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas

ruled that petitioner had a constitutional right to a new trial. The Fifth Circuit Court abused its discretion by not ruling that the Bankruptcy Court and the United States District Court had no jurisdiction over the Veterans Land Board and the State of Texas property. The Fifth Circuit Court abused its discretion by not ruling that the United States District Judge, Eldon B. Mahon abused his discretion by forcing J. A. Hardin under duress and undue influence to sign over his deed and grant from the Veterans' Land Board and the State of Texas and taking away all of petitioner's assets. The Fifth Circuit Court abused its discretion by not ruling that Gilbert and Colvin is part of the conspiracy to deprive petitioner of all his assets. The Fifth Circuit Court abused its discretion by not ruling that the Trustee, the Bankruptcy Judge and the United States District Judge was compelled to accept full tender payment from petitioner and J. A. Hardin.

REASON FOR GRANTING THE WRIT

When petitioner is denied his constitutional right of due process of law under both the United States Constitution and the Texas Constitution

Petitioner has been the Victim in the past ten years by numerous Judicial errors and has been victimized in the States and Federal Courts. The Supreme Court, in the Clarence Gideon, held unanimously that he had the right to counsel.

The Supreme Court ruled in the Scottsbore case that counsel must be supplied if the results could be a prison sentence whatever the label attached to the misconduct, (also see the Case of Argisinger v. Hamlin).

CONCLUSION

For the foregoing reasons, petitioner, Lavoyd Wayne "Bill" Hardin, respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully Submitted,

Lavoyd Wayne "Bill" Hardin

Lavoyd Wayne "Bill" Hardin
Rt. 1, Box 127A
DeLeon, Texas 76444
Telephone: (817) 893-2686

Dated: 12th May, 1986.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

No. _____

LAVOYD WAYNE "Bill" HARDIN

Petitioner.

v.

GILBERT & COLVIN

Respondent.

PROOF OF SERVICE

State of Texas }
}
County of Comanche }

I, Lavoyd Wayne "Bill" Hardin, after being duly sworn, deposes and says that pursuant to Rule 28.3 of this court, he served the within petition For Writ of Certiorari To The Court of Appeals For The Fifth Circuit or Counsel for the Respondent and all interested parties named in this petition below by enclosing a copy thereof in an envelope, first class postage prepaid, mailed at DeLeon, Texas, addressed to:

Gilbert and Colvin, 1035 InterFirst Tower,

Fort Worth, Texas 76102

Clifford F. McMaster, 307 Capital National Bank Building, Fort Worth, Texas 76102

J. A. Hardin, Route One, Fayetteville, Tennessee 37334

Ben Sudderth and Keith Woodley of Sudderth, Woodley and Dudley, 109 West Grand, Comanche, Texas 76442

St. Clair Newbern, III, 1116 River Plaza Tower, 1701 River Run Road, Fort Worth, Texas 76107

Joan M. Hardin Foster, 904 Burleson Street, DeLeon, Texas 76444

Roy Hufstutler, 1001 North Houston Street, Comanche, Texas 76442

James Robert Arthur, W. Highland, Comanche, Texas 76442.

Signed this 12th day of May, 1986.

Lavoyd W. Bill Hardin

Lavoyd W. Bill Hardin
Route 1, Box 127A
DeLeon, Texas 76444
Phone No. (817) 893-2686

Subscribed and Sworn to Before Me, this 12th day of May, 1986.

Delton Cogburn (DELTON COGBURN)

Notary Public In and For
Comanche County, State of Texas

2.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 85-1686

Summary Calendar

AVOYD WAYNE HARDIN, a/k/a
ILL HARIN, Debtor

AVOYD WAYNE HARDIN, a/k/a
ILL HARDIN,

Plaintiff-Appellant,

versus

ILVERT & COLVIN,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Texas

(February 24, 1986)

fore REAVLEY, HIGGINBOTHAM, and HILL, Circuit Judges.

R CURIAM:*

Local Rule 47.5 provides: "The publication of opinions that
ve no precedential value and merely decide particular cases on
e basis of well-settled principles of law imposes needless
pense on the public and burdens on the legal profession."
rsuant to that Rule, the court has determined that this opinion
ould not be published.

RMH 2-17-86 PSH 2-18-86 JMR 2-21-86

APPENDIX A1

This is the sixth time that appellant, Lavoyd Wayne "Bill" Hardin, has perfected an appeal in a matter relating to his bankrupt estate. See Hardin v. Hardin, No. 84-1250 (5th Cir. May 24, 1984) (dismissed for failure to file briefs); Hardin v. Hardin, No. 84-1037 (5th Cir. Aug. 22, 1984)(per curiam); Hardin v. McMaster, No. 84-1396 (5th Cir. Sept. 26, 1984)(per curiam); Hardin v. McMaster, No. 84-1614 (5th Cir. Dec. 20, 1984)(per curiam); Hardin v. Arthur, No. 84-1615 (5th Cir. Dec. 20, 1984)(per curiam). In the instant appeal Hardin appeals from an order by the bankruptcy court granting an interim award to the Trustee for attorney's fees, commission and expenses. Hardin's challenge to this award is based on allegations that the trustee, his attorneys, and other have deprived him of "his constitutional right, his life's sweat and labor and every asset that he has accumulated." This court in prior holdings has determined that these allegations are without legal merit. Finding Hardin's claim to have no conceivable foundation in fact or law we dismiss the appeal. See Windsor v. Pan American Airways, 744 F.2d 1187 (5th Cir. 1984).

Appeal DISMISSED.

APPENDIX A-2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 85-1726
Summary Calendar

LAVOYD WAYNE HARDIN,
a/k/a/ BILL HARDIN,

Plaintiff-Appellant,

versus

GILBERT & COLVIN,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas

(March 17, 1986)

fore RUBIN, JOHNSON, and JONES, Circuit Judges.

R CURIAM:

The judgment of the district court is AFFIRMED. See Local
e 47.6. Appellant has previously submitted numerous frivolous
eals to this Court. While this Court will not exercise its
cretion to impose sanctions on this appeal, further abuse of
appellate process will not be tolerated. Therefore,
ellee's motion for sanctions is DENIED. See Fed. R. App. P.

APPENDIX B

(B1)

U.S. COURT OF APPEALS
FILED
MAR 5 1986
GILBERT F. GANUCHEAU

In The United States Court of Appeals

For The Fifth Circuit

U.S. COURT OF APPEALS
RECEIVED
MAR 5 1986
NEW ORLEANS, LA.

No. 85 - 1686

Lavoyd Wayne "Bill" Hardin,

plaintiff - Appellant,

Versus

Gilbert & Colvin,

Defendant - Appellee

Notice of Appeal

I, Lavoyd Wayne "Bill" Hardin, pro-se, appeal Case No. 85 - 1686, to the Supreme Court of the United States of America in Washington, D. C.

Signed this 3rd day of March, 1986.

Lavoyd Wayne "Bill" Hardin

Lavoyd Wayne "Bill" Hardin
Route 1, Box 127A
De Leon, Texas 76444
Phone No. (817) 893-2686

(B2)

FILED

MAR 27 1986

GILBERT F. GANUCHEAU
CLERK

U.S. COURT OF APPEALS
RECEIVED
MAR 27 1986
NEW ORLEANS, LA.

In The United States Court of Appeals
For The Fifth Circuit

No. 85-1726

Lavoyd Wayne "Bill" Hardin,

plaintiff-Appellant,

Versus

Gilbert & Colvin,

Defendant-Appellee

Notice of Appeal

I, Lavoyd Wayne "Bill" Hardin, pro-se, appeal Case No. 85-1726, to the Supreme Court of the United States of America in Washington, D. C.

Signed this 24th day of March, 1986.

Lavoyd Wayne "Bill" Hardin

Lavoyd Wayne "Bill" Hardin
Route 1, Box 127A
DeLeon, Texas 76444
Phone No. (817) 893-2686

(B31

Supreme Court, U.S.
FILED
SEP 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-2135

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

IN THE MATTER OF
LAVOYD WAYNE HARDIN,
a/k/a "BILL HARDIN" DEBTOR,

LAVOYD WAYNE HARDIN,
a/k/a "BILL HARDIN",

PETITIONER.

VERSUS

GILBERT & COLVIN,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

JOSEPH W. COLVIN
GILBERT & COLVIN
1035 INTERFIRST TOWER
FORT WORTH, TEXAS 76102
(817)336-7883

ATTORNEYS FOR RESPONDENT,
GILBERT & COLVIN and
CLIFFORD F. McMASTER, TRUSTEE

QUESTIONS PRESENTED FOR REVIEW

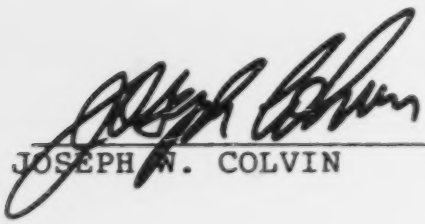
1. Whether the United States Court of Appeals for the Fifth Circuit erred in affirming the judgment of the United States District Court for the Northern District of Texas which granted an interim award to the Trustee for attorneys fees, commissions and expenses?

2. Whether the United States Court of Appeals for the Fifth Circuit erred in affirming the judgment of the United States District Court for the Northern District of Texas which granted an interim award of compensation and reimbursement of expenses to Gilbert & Colvin for their representation of the Trustee?

CERTIFICATE OF PARTIES TO THE PROCEEDING

The undersigned counsel of record for Gilbert & Colvin and Clifford F. McMaster, Trustee, Respondent, certifies that the following are parties to this proceeding:

1. Lavoyd Wayne "Bill" Hardin
2. Clifford F. McMaster
3. Gilbert & Colvin



JOSEPH W. COLVIN

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JUDGMENTS BELOW

FIFTH CIRCUIT APPEALS:

84-1037 - judgment of district court affirmed, 8/22/84

84-1250 - dismissed for want of prosecution, failure to file briefs, 5/22/84

84-1396 - appeal dismissed, 9/26/84

84-1614 - appeal held frivolous, 12/20/84

84-1615 - judgment of district court affirmed, 12/20/84

85-1686 - appeal dismissed, 2/24/86

85-1726 - judgment of district court affirmed, 3/17/86

STATEMENT OF JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. §1254.

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STATUTES AND REGULATIONS

28 U.S.C. §1254..... 4

11 U.S.C. §327..... 10

11 U.S.C. §330..... 9

28 U.S.C. §2101(c)..... 14

THE FOLLOWING CASES INVOLVE RELATED ISSUES:

Hardin v. Hardin, No. 84-1037, United States Court of Appeals for the Fifth Circuit (affirmed 8/22/84)

Hardin v. McMaster, No. 84-1250, United States Court of Appeals for the Fifth Circuit (dismissed 5/24/84)

Hardin v. McMaster, No. 84-1396, United States Court of Appeals for the Fifth Circuit (dismissed 9/26/84)

Hardin v. McMaster, No. 84-1614, United States Court of Appeals for the Fifth Circuit (affirmed 12/20/84)

Hardin v. Arthur, No. 84-1615, United States Court of Appeals for the Fifth Circuit (affirmed 12/20/84)

Hardin v. Gilbert & Colvin, No. 85-1686, United States Court of Appeals for the Fifth Circuit (affirmed 2/24/86)

Hardin v. Gilbert & Colvin, No. 85-1726, United States Court of Appeals for the Fifth Circuit (affirmed 3/17/86)

STATEMENT OF THE CASE

Petitioner's petition for certiorari results from seven (7) previously unsuccessful appeals in the United States Court of Appeals for the Fifth Circuit. The prior appeals bear the following numbers: 84-1037, 84-1250, 84-1396, 84-1614, 84-1615, 85-1686 and 85-1726. This petition for certiorari is based on the dismissal of Appeal No. 85-1686 on February 24, 1986, and the affirmation of the judgment of the district court in Appeal No. 85-1726 on March 17, 1986. The first appeal was from an order granting an interim award to the Trustee for attorney's fees, commissions and expenses. The second appeal was from an order granting an interim award of compensation and reimbursement of expenses

to Gilbert & Colvin for their representation of the Trustee.

SUMMARY OF THE ARGUMENT

The petition for certiorari should be denied because petitioner has not raised any issues attacking the two judgments that are the basis for the petition. Instead, he raises matters heretofore considered in prior appeals, and complains generally about the outcome of every proceeding in which he has been a party throughout the last decade, whether in the Courts of the State of Texas, the United States Bankruptcy Court, the United States District Court for the Northern District of Texas or the United States Court of Appeals for the Fifth Circuit. As petitioner is the debtor, he would only receive those funds remaining

after payment of all claims in his bankruptcy proceedings.

ARGUMENT

This litigation, seeking to challenge two separate judgments awarding fees and expenses to respondent and the Trustee of petitioner's bankruptcy estate, constitutes the latest in a long series of efforts by Lavoyd Wayne "Bill" Hardin to harass the Trustee of his estate and Trustee's counsel, Gilbert & Colvin, as well as to waste judicial time and resources by continuing to perfect frivolous and unmeritorious appeals. The judgments which form the basis for this petition may be found at pages 57-59, Petitioner's Supplemental Appendix.

The United States Bankruptcy Code, at 11 U.S.C. 330, provides that after notice

and hearing, the court may award to a professional person employed under §327 of that title, reasonable compensation for actual, necessary services rendered by such professional person or attorney, as the case may be, based on the nature, the extent and the value of the services, the time spent on such services and the cost of comparable services other than in a case under that title and reimbursement for actual and necessary expenses.

The United States Bankruptcy Code, at 11 U.S.C. §327, provides that:

> "(a) Except as otherwise provided in this section, the Trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the Trustee in carrying out the Trustee's duties under this title."
>
> "(c) In a case under Chapter 7 or 11

> of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor, in which case the court shall disapprove such employment if there is an actual conflict of interest."

The Trustee did so employ Gilbert & Colvin as counsel to represent him in appeals filed by petitioner on matters affecting the Trustee. No creditor objected to such employment and same was granted pursuant to court order. Gilbert & Colvin therefore has a vested interest in the protection of the order awarding them attorney's fees and expenses. The services for which Gilbert & Colvin were compensated entailed representation of Mr. Clifford McMaster before the United States Court of Appeals for the Fifth Circuit on appeals filed by petitioner in Case Nos. 84-1396, 84-1614 and 84-1615.

Respondent would show that in Appeal No. 84-1396, the United States Court of Appeals for the Fifth Circuit dismissed Mr. Hardin's appeal by Order entered September 26, 1984. The appeal was dismissed because Mr. Hardin transferred his interest in the real property which was in issue to Mr. J. A. Hardin, and therefore lacked standing to complain of the Order appealed from. Furthermore, Mr. J. A. Hardin had deeded the property to the Trustee, thus mooting the controversy.

In Appeal No. 84-1614, the United States Court of Appeals for the Fifth Circuit, by Order entered December 20, 1984, held that Mr. Hardin's appeal was frivolous in every respect.

The United States Court of Appeals for the Fifth Circuit, in Appeal No.

84-1615, ruled that the Order of the United States District Judge enjoining petitioner from harrassing the purchaser of 154 acres of land from the Trustee in petitioner's bankruptcy case was within the District Court's jurisdiction.

Appeal No. 85-1686 in which petitioner appealed from an order granting an interim award to the Trustee for attorney's fees, commissions and expenses was dismissed on the basis that petitioner's claim had no conceivable foundation in fact or law. Similarly, in Appeal No. 85-1726, the judgment of the District Court, awarding Gilbert & Colvin interim fees and expenses, was affirmed, the United States Court of Appeals for the Fifth Circuit stating that while it would not exercise its discretion to impose sanctions, further abuse of the appellate

process would not be tolerated (p. 57, Petitioner's Supplemental Appendix).

The petition for certiorari should be denied as petitioner is the debtor and lacks standing to complain of the payment of attorney's fees in a Chapter 7 bankruptcy proceeding. Petitioner neither asserts nor possesses a claim which would have parity or priority to the claims allowed by the Court.

The petition for certiorari should further be denied as petitioner is raising stale, unsuccessful appeals in conjunction with those alleged to form the basis for this petition. The petition for certiorari is only timely with respect to the judgments of February 24, 1986 and March 17, 1986, respectively, pursuant to 28 U.S.C. §2101(c).

Petitioner claims that he has been denied his constitutional right to the

assistance of counsel for his defense. Petitioner cites only criminal case authority for this proposition, and fails to recognize that no such right obtains in civil litigation. Furthermore, Petitioner was represented by counsel in his voluntary petition under the Bankruptcy Code and was represented by counsel in Appeal No. 84-1037 in the Fifth Circuit. Petitioner then dismissed his bankruptcy counsel and voluntarily elected to represent himself in these proceedings. Petitioner's claim that he was denied counsel relates to a proceeding to which he was not a party and which proceeding was appealed to the Fifth Circuit. Case No. 84-1396 was dismissed as moot and no writ was filed in this court.

Respondent would show that the fourteen (14) questions presented for review

by petitioner were addressed and rejected by the United States Court of Appeals for the Fifth Circuit in one or more of the aforementioned appeals, which raised issues either identical to or similar to those set forth by petitioner in the petition for certiorari.

Respondent would show that the petitioner has therefore not raised any issues germane to the judgments appealed, but is using the petition for certiorari in an effort to bring before this Court matters heretofore decided adversely to petitioner by the United States Court of Appeals for the Fifth Circuit. The petition for certiorari should, therefore, be denied.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,



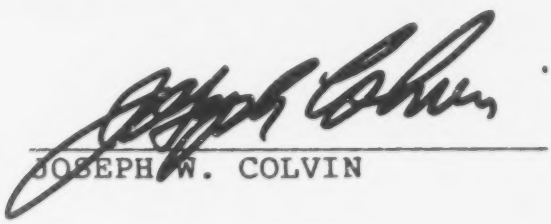
JOSEPH W. COLVIN

GILBERT & COLVIN
1035 InterFirst Tower
Fort Worth, Texas 76102

Telephone: (817)336-7883
State Bar #04631000

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing have been served on all counsel of record, by mailing sets of same, on this 11 day of September, 1986.



JOSEPH W. COLVIN

Supreme Court, U.S.
FILED
SEP 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-2135

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

IN THE MATTER OF
LAVOYD WAYNE HARDIN,
a/k/a "BILL HARDIN" DEBTOR,

LAVOYD WAYNE HARDIN,
a/k/a "BILL HARDIN",

PETITIONER.

VERSUS

GILBERT & COLVIN,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

EXHIBITS DESIGNATED FOR INCLUSION IN RESPONDENT'S BRIEF IN OPPOSITION

JOSEPH W. COLVIN
GILBERT & COLVIN
1035 INTERFIRST TOWER
FORT WORTH, TEXAS 76102
(817)336-7883

ATTORNEYS FOR RESPONDENT,
GILBERT & COLVIN and
CLIFFORD F. McMASTER, TRUSTEE

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* The following are reproductions of the originals.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 84-1037
Summary Calendar

IN THE MATTER OF LAVOID WAYNE HARDIN
A/K/A "BILL HARDIN", DEBTOR.

JOAN MURLE HARDIN,

Plaintiff-Appellee,

VERSUS

LAVOID WAYNE HARDIN
A/K/A "BILL HARDIN",

Defendant-Appellant.

Appeal from the United States District court for the Northern District of Texas

---

(August 22, 1984)

Before JOHNSON, GEE and DAVIS, Circuit Judges.

PER CURIAM:

The opinion of the district court in this case is AFFIRMED. See Local Rule 47.6.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 84-1250

IN THE MATTER OF: LAVOYD WAYNE "BILL" HARDIN
Debtor,
CLIFFORD F. MCMASTER,
Trustee
Plaintiff-Appellee,

versus

LAVOYD WAYNE "BILL" HARDIN and J. A. HARDIN,
Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Texas

CLERK'S OFFICE:

Pursuant to Local Rule 42.3, the appeal was duly entered dismissed for want of prosecution for failure of APPELLANTS TO FILE THEIR BRIEFS within the time fixed by the rules, this 24th day of May, 1984.

GILBERT F. GANUCHEAU
Clerk of the United States
Court of Appeals for the
Fifth Circuit

By:_____
Deputy Clerk
FOR THE COURT - BY DIRECTION

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 84-1396
Summary Calendar

IN THE MATTER OF: LAVOYD WAYNE "BILL" HARDIN,
Debtor.

LAVOYD WAYNE "BILL" HARDIN,
Plaintiff-Appellant,

versus

CLIFFORD F. McMASTER,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas
(September 26, 1984)

Before CLARK, Chief Judge, RUBIN and GARWOOD, Circuit Judges.

PER CURIAM:

Appellant Lavoyd Wayne "Bill" Hardin ("Bill Hardin") appeals the district court's order of April 24, 1984 affirming the bankruptcy court's order of March 9, 1984 which, on application of Clifford F. McMaster, Trustee of the Lavoyd Wayne Hardin

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*Local Rule 47.5 provides: "The publication of opinions that have of precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Bankruptcy Estate (the "Trustee"), did the following: (1) declared null and void the August 24, 1983 assignment by Bill Hardin to J. A. Hardin of Bill Hardin's interest, as purchaser under a September 20, 1955 Texas Veteran's Land Board contract, in a certain 154.3-acre tract of land and the consequent January 6, 1984 deed of such land from the Veteran's Land Board to J. A. Hardin as assignee of the purchaser in such contract; and (2) ordered J. A. Hardin to deed such 154.3-acre tract to the Trustee.

On October 31, 1980 Bill Hardin filed for bankruptcy under Chapter 13. One of the assets scheduled by Bill Hardin was his interest, as purchaser under the referenced Veteran's Land Board contract, in the mentioned 154.3-acre

tract. On June 16, 1982 the bankruptcy court converted the proceeding to one under Chapter 7. On October 13, 1982 the bankruptcy court denied Bill Hardin's motion to convert the proceeding to one under Chapter 11, and on October 27, 1982 the bankruptcy court ruled that Bill Hardin could not claim the 154.3 acres as his homestead. Bill Hardin appealed the referenced October 13, 1982 and October 27, 1982 bankruptcy court orders to the district court, those two proceedings were consolidated before the district court, and on November 30, 1983 the district court in all things affirmed these orders of the bankruptcy court. Bill Hardin appealed to this Court, which affirmed without opinion on August 22, 1984. Joan Murle Hardin v. Lavoyd Wayne Hardin, No. 84-1037.

As noted, Bill Hardin conveyed his interest in the 154.3-acre tract to J. A. Hardin on August 24, 1983, and on January 6, 1984 the Veteran's Land Board deeded the property to J. A. Hardin. After notice and hearing, the bankruptcy court on March 9, 1984 declared void both the August 24, 1983 assignment to J. A. Hardin and the January 6, 1984 deed to him, and likewise ordered J. A. Hardin to convey the 154.3 acres to the Trustee.

According to appellee, the district court on March 9, 1984 ordered J. A. Hardin to execute the deed or appear at a March 20, 1984 hearing to show cause why he should not be held in contempt; appellee also advises that Bill Hardin attempted to appeal the March 9, 1984 district court show cause order to this Court, where the appeal was docketed as

our No. 84-1250 but was dismissed May 24, 1984 for failure of appellants to file briefs.

Appellee, the Trustee, likewise states that on March 14, 1984 J. A. Hardin conveyed the 154.3 acres to the Trustee. Appellant essentially confirms this in his brief. The Trustee likewise states that the Veteran's Land Board has since March 9, 1984 given the Trustee a deed to the 154.3 acres and that the Trustee sold such land pursuant to court order on April 5, 1984.

On April 24, 1984 the district court, on appellant's appeal, affirmed the bankruptcy court's March 9, 1984 order.

Appellant's only point on appeal is that the 154.3 acres was his homestead and that the proceedings were not properly under Chapter 7. Neither contention

appears to have any merit, and both were necessarily resolved against appellant in our above-referenced cause No. 84-1037. Under 11 U.S.C. §§ 521(3), 541(a)(1), and 549, the bankruptcy court's March 9, 1984 order, and the district court's April 24, 1984 order affirming it, would therefore appear to be proper. However, in any event, particularly in light of this Court's affirmance in No. 84-1037 and dismissal of appeal in No. 84-1250, the appeal must be dismissed because appellant, having transferred his interest to J. A. Hardin, has no standing, and subsequent to the complained of March 9, 1984 order, J. A. Hardin has deeded the property to the Trustee, thus mooting the controversy. Hence, appellee's motion to dismiss the appeal should be granted.

Therefore, the appeal is DISMISSED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 84-1614
Summary Calendar

In the Matter of: LAVOYD WAYNE "BILL" HARDIN, Debtor

LAVOYD WAYNE "BILL" HARDIN,

Plaintiff-Appellant,

versus

CLIFFORD L. McMASTER, Trustee,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas

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(December 20, 1984)

Before WILLIAMS, JOLLY, and HILL, Circuit Judges.

PER CURIAM.*

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expenses on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

In this appeal appellant, Lavoyd Wayne "Bill" Hardin, is challenging the distribution of proceeds from the sale of 154 acres of land by the trustee in bankruptcy. Particular objection is made to recognition of his divorced wife's secured claim of $52,048.99.

At the time appellant and his wife divorced, he purchase his wife's community interest in the 154 acres. After one year's payment on the note, no further payments were made. His former wife brought suit in the courts of Texas to accelerate the note and obtained a judgment in the Supreme Court of the State of Texas ordering a sheriff's sale. Because of the bankruptcy, the sale did not take place until the May 1984, sale by the trustee in bankruptcy.

Appellant without any supporting information charges bias and prejudice on

the part of the federal court, and undertakes to challenge the validity of the Texas Supreme Court judgment obtained by his former wife recognizing the lien on the property and accelerating the note. Hardin v. Hardin, 597 S.W.2d 347 (Tex. 1980). Appellant cannot obtain review of that decision in this Court. No colorable constitutional due process claims are stated.

Finally, appellant's claim that he did not receive proper notice under the Bankruptcy Code for the hearing in which the disbursement satisfying the secured claim of his former wife was ordered is negated by the record. Adequate attempts to serve him under the Code were made, and his former attorney was present at the hearing.

The order of this district court states, "The Court is well aware of the

history of appellant's bankruptcy proceedings and his intransigent behavior, which has resulted in numerous delays in several previous appeals to this Court." The accuracy of this statement is well supported by the record in this case. The appeal is frivolous in every respect. The order of the district court upholding the order of the bankruptcy judge providing for disbursements of the proceeds of the sale of the 154 acres of land under Chapter VII of the Bankruptcy Code is affirmed.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 84-1615
Summary Calendar

In the Matter of: LAVOYD WAYNE "BILL" HARDIN, Debtor.

LAVOYD WAYNE "BILL" HARDIN,

Plaintiff-Appellant,

versus

JAMES ROBERT ARTHUR,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas

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(December 20, 1984)

Before WILLIAMS, JOLLY, and HILL, Circuit Judges.

PER CURIAM:*

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Appellant, Lavoyd Wayne "Bill" Hardin brought this appeal from an order entered by the bankruptcy court enjoining him from "coming upon, trespassing upon, or otherwise exercising control" over 154 acres of land which he had owned and which had been sold in a bankruptcy sale. Appellant had appealed to this Court for the conversion of his case from Chapter XIII to Chapter VII of the Bankruptcy Code, and he also claims that the bankruptcy court abused its discretion by moving ahead to trial in this mater because of the appeal to the Fifth Circuit of the validity of the trustee's appointment and subsequent conveyance of the real estate. The nature of the appeals to this Court is not clear from the record. Without the slightest informational support, appellant also claims

that he has been "framed", that the trustee in bankruptcy had "lied", and that the bankruptcy court was "harassing" appellant by going ahead with the hearing in the case.

The simple facts are that in the bankruptcy proceeding appellant could not claim these 154 acres as his homestead because his home in DeLeon was his homestead. After the sale appellant entered on the property and planted a crop of alfalfa, and harassed the purchaser of the property who had obtained it in the court-ordered sale. He further admitted to cutting the owner's lock on the gate in order to gain access to the property. Nothing in the record indicates that any stay of the prior decisions of the bankruptcy court had been issued.

The jurisdiction and proper orders of a federal court must be obeyed. There is nothing in this record to indicate that the bankruptcy court has acted improperly at any time throughout this proceeding, that the federal district court has acted erroneously or with an abuse of discretion. Appellant became bankrupt. The proper sale of assets which he owed was carried out. Claims of harassment and bad faith are unsupported in the record. The property in question having been correctly sold by the trustee in bankruptcy, the property no longer belongs to the appellant. Appellant's attempts to exercise continuing claim of ownership and control over the property are an harassment to the owner. The district court was properly within its jurisdiction in enjoining these activi-

ties which were in defiance of the decisions of the court. The district court properly exercised its discretion in affirming. In turn, we affirm.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 84-1686
Summary Calendar

LAVOYD WAYNE HARDIN, a/k/a
BILL HARIN, (sic) Debtor

LAVOYD WAYNE HARDIN, a/k/a
BILL HARDIN,

Plaintiff-Appellant,

versus

GILBERT & COLVIN,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas

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(February 24, 1986)

Before REAVLEY, HIGGINBOTHAM, and HILL, Circuit Judges.

PER CURIAM:*

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*Local Rule 47.5 provides: "The publication of opinions that have no preceden-

tial value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

This is the sixth time that appellant, Lavoyd Wayne "Bill" Hardin has perfected an appeal in a matter relating to his bankruptcy estate. See Hardin v. Hardin, No. 84-1250 (5th Cir. May 24, 1984) (dismissed for failure to file briefs); Hardin v. Hardin, No. 84-1037 (5th Cir. Aug. 22, 1984)(per curiam); Hardin v. McMaster, No. 84-1396 (5th Cir. Sept. 26, 1984) (per curiam); Hardin v. McMaster, No. 84-1614 (5th Cir. Dec. 20, 1984) (per curiam); Hardin v. Arthur, No. 84-1615 (5th Cir. Dec. 20, 1984) (per curiam). In the instant appeal Hardin appeals from an order by

the bankruptcy court granting an interim award to the Trustee for attorney's fees, commission and expenses. Hardin's challenge to this award is based on allegations that the trustee, his attorneys, and other have deprived him of "his constitutional right, his life's sweat and labor and ever asset that he has accumulated." This court in prior holdings has determined that these allegations are without legal merit. Finding Hardin's claim to have no conceivable foundation in fact or law we dismiss the appeal. See Windsor v. Pan American Airways, 744 F.2d 1187 (5th Cir. 1984).

Appeal DISMISSED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

CA4-85-342-E

No. 85-1726
Summary Calendar

LAVOYD WAYNE HARDIN,
a/k/a BILL HARDIN,

Plaintiff-Appellant,

versus

GILBERT & COLVIN,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas

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(March 17, 1986)

Before RUBIN, JOHNSON, and JONES, Circuit Judges.

PER CURIAM:

The judgment of the district court is AFFIRMED. See Local Rule 47.6.

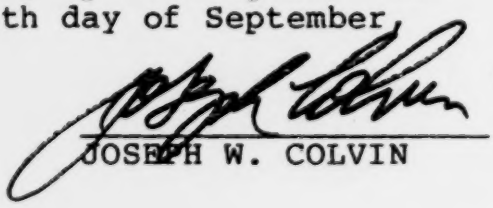
Appellant has previously submitted numerous frivolous appeals to this Court. While this Court will not exercise its discretion to impose sanctions on this appeal, further abuse of the appellate process will not be tolerated. Therefore, appellee's motion for sanctions is DENIED. See Fed. R. App. P. 38.

Costs on appeal are taxed against plaintiff-appellant.

ISSUED AS MANDATE: APR 10, 1986

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing have been served on all counsel of record, by mailing sets of same, on this 11th day of September, 1986.



JOSEPH W. COLVIN

Supreme Court, U.S.
FILED
AUG 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-2135

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

LAVOYD WAYNE "Bill" HARDIN

Petitioner.

v.

GILBERT & COLVIN

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENT APPENDIX

Lavoyd Wayne "Bill" Hardin Pro-SE
Lavoyd Wayne "Bill" Hardin, pro se
Route 1, Box 127A
DeLeon, Texas 76444
Telephone: (817) 893-2686

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	)	CASE NO.
	)	480-00513
LAVOID WAYNE "BILL" HARDIN	)	
	)	Chapter 13
DEBTOR	)	

ORDER CONVERTING CASE TO CHAPTER 7

At Fort Worth, Texas, in said District, on the 16th day of June, 1982, came on for consideration the Amended Application for Conversion to a Chapter 7 proceeding filed herein by Joan Murle Hardin; and the Court having considered said Motion; and having heard the testimony of the witness; and being advised by the Debtor in open Court that he has no intention of paying the debt due Joan Murle Hardin pursuant to the Order Allowing Compensation for Loss, Expense and Damage; and being of the opinion that no Chapter 13 is possible as a result of the position of the Debtor; and being further of the opinion that the Debtor would qualify to be a Debtor under Chapter 7 of the Bankruptcy Code; it is therefore

ORDERED that these proceedings be, and they are hereby, converted to Chapter 7 liquidation proceedings under 11 USC 701; and it is further

ORDERED that the United States Trustee appoint an Interim Trustee in these proceedings.

ENTERED this 16th day of June, 1982.

Signed by: JOHN FLOWERS,
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

LAVOID WAYNE HARDIN NO. 480-00513

DEBTOR

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At Fort Worth, Texas in said District on the 22nd day of September, 1982 came on to be heard the Trustee's Objection to the Debtor's Claimed Exemptions and came the Trustee in person and the Debtor in person and by counsel and announced ready to proceed. And the Court having heard the evidence and argument of counsel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

That the Debtor acquired the property in question in the year 1955.

2.

Such property has been used continuously by him for farming operations.

3.

From time to time a portion of it, approximately 25% has

been leased to others for farming operations.

4.

The Debtor owns a house in town which he has occupied for approximately 17 years.

5.

Such occupancy until the year 1977 or 1978 was as a tennant renting the property.

6.

That in either 1977 or 1978 he purchased the urban property

7.

That he had caused to be drilled irrigation water wells on the rural tract in question.

8.

That he has never resided on the rural tract in question.

9.

That he has not commenced or taken any overt act whatsoever to construct a home or house on the rural tract in question.

10.

That the water wells are solely to facilitate the farming operation and irrigation.

CONCLUSIONS OF LAW

1.

That in deciding the case I will be guided by the principals announced in the case of Gilmore against Dennison, Texas Supreme Court 115 SW2d 902 and the case of Cheswick against Freeman, Texas Supreme Court, 287 SW2d 171. The Gilmore case being decided in 1978 and the Cheswick case being decided in 1956.

2.

Based upon those two opinions and my findings of fact that there were no overt acts or preparation for the property to become a homestead I conclude that the 154 acres is not the homestead of Mr. Hardin.

3.

I also conclude as a matter of law that the findings which I made in connection with the determination of the right of the Debtor, Mr. Hardin, to cure default as set forth in the Memorandum Opinion which I filed in this proceeding, I found as a necessary element, the fact that the property in question was not his homestead and therefore I have previously ruled on that issue on the basis of both of those grounds, I there-

fore conclude that the property is not the homestead of the Debtor Mr. Hardin.

SIGNED this the 21st day of October, 1982.

Signed by: JOHN FLOWERS,
BANKRUPTCY JUDGE

Order L

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

LAVOID WAYNE HARDIN NO. 480-00513

DEBTOR

ORDER ON TRUSTEE'S OBJECTION TO THE DEBTOR'S CLAIMED EXEMPTIONS

At Fort Worth, Texas in said District on the 22nd day of September, 1982 came on to be heard the Trustee's Objection to the Debtor's claimed exemption and came the Trustee in person and the Debtor in person and by counsel and announced ready to proceed;

And the parties stipulated and agreed that the correct legal description the 154 acre tract of land that was claimed as exempt by the Debtor in his schedules and which claim was objected to by the Trustee is that set forth in Exhibit "A" attached hereto

The Court having heard the evidence and argument of counsel and made the findings of fact and conclusions of law as shown by an instrument so entitled contemporaneously herewith signed by the Court;

And the Court being of the opinion that the objection

of the Trustee to the Debtor's claim of exemption as to said 154 acre tract should be sustained, said objection is hereby sustained and it is ordered that the 154 acre tract of land described in Exhibit "A" attached hereto be not exempted to the Debtor.

SIGNED this the 27th day of October, 1982.

Signed by: JOHN FLOWERS,
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
LAVOYD WAYNE "BILL" HARDIN	§	BANKRUPTCY NO.
	§	
DEBTOR	§	480-00513
	§	
CLIFFORD F. McMASTER, TRUSTEE	§	
	§	
PLAINTIFF	§	
	§	
VS.	§	
	§	
LAVOYD WAYNE "BILL" HARDIN et al	§	ADVERSARY PROCEEDING NO. 483-0490
DEFENDANTS	§	

ORDER

At Fort Worth, Texas in said District on the 20th day of October 1983 at the time set in the Summons of Notice of Trial, came on to be heard the above Adversary Proceeding and the following parties appeared by counsel (or in the case of the Trustee, Clifford F. McMaster, pro se):

1. The Plaintiff, Clifford F. McMaster;
2. Lavoyd Wayne "Bill" Hardin;
3. Joan Murrel Hardin;

but came not the Defendant, The Veterans Land Board of

the State of Texas although the return on the Summons and Notice of Trial on file with the clerk showed proper service of process on said Defendant.

And the Court considered the motion of the Defendant, Lavoyd Wayne "Bill" Hardin, for a more definite statement and overruled same;

And the Court having considered the pleadings and evidence and argument of counsel, and being of the opinion that the following order should be entered;

IT IS ORDERED that Clifford F. McMaster, Trustee in Bankruptcy be and he is hereby authorized to sell the real estate described in Exhibit "A" attached hereto free and clear of all liens and interests of all Defendants herein except as hereinafter provided for with the liens or interests of all Defendants to attach to the net proceeds of sale.

IT IS FURTHER ORDERED that the Trustee may pay at closing the following items:

A. The amount owing The Veterans Land Board of the State of Texas.

B. All reasonable and necessary closing costs.

C. Any and all ad valorem taxes owing on the property sold.

IT IS FURTHER ORDERED that the sale shall be at private sale for cash or at public sale for cash as the Trustee in his discretion may determine to be in the best interests of the estate.

SIGNED this the 7th day of Nov., 1983.

by JUDGE ROBERTS
U. S. BANKRUPTCY COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
JOAN MURLE HARDIN	§	
	§	CIVIL ACTION NO.
VS.	§	4-82-595-E
	§	(Consolidated with
	§	4-82-597-E)
LAVOID WAYNE "BILL" HARDIN	§	
	§	

JUDGMENT

Based upon the evidence heard by the Court on November 3, 1983, the evidence presented to the Bankruptcy Court, and the Memorandum Opinion entered by this Court on November 30, 1983, it is hereby ORDERED and ADJUDGED that:

1. The October 13, 1982 Order Denying Motion to convert to Chapter 11 Proceeding is AFFIRMED;

2. The October 27, 1982 Order on Trustee's Objection to the Debtor's Claimed Exemptions is AFFIRMED; and

3. The appeals filed June 23, 1982 from the June 16, 1982 Order Allowing Compensation for Loss, Expense and Damage and Order Converting the Case to Chapter 7 are DISMISSED.

Signed this 30th day of November, 1983 by

ELDON B. MAHON, United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
JOAN MURLE HARDIN	§	
	§	CIVIL ACTION NO.
VS.	§	4-82-595-E
	§	(Consolidated with
LAVOID WAYNE "BILL" HARDIN	§	4-82-597-E)

MEMORANDUM OPINION

This Court has before it two appeals from orders entered by the United States Bankruptcy Court for the Northern District of Texas in the Matter of Joan Murle Hardin v. Lavoid Wayne "Bill" Hardin, which have been filed pursuant to Paragraph (e) (2) (A) (i) of the Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings entered December 21, 1982 ("Local Rule"). In CA 4-82-595-E Appellant Bill Hardin appeals from the October 13, 1982 Order Denying Motion to Convert to Chapter 11 Proceeding. In CA 4-82-597-E Appellant Bill Hardin appeals from the October 27, 1982 Order on Trustee's Objection to the Debtor's Claimed Exemptions. In the interest of judicial economy, the cases have been consolidated under CA 4-82-595-E. Appellee Joan Murle Hardin points out that notices of appeal were filed on

June 23, 1982 from the bankruptcy court's Order Allowing Compensation for Loss, Expense and Damage and the Order Converting Case to Chapter 7, both of which were entered on June 16, 1982. No briefs have been filed in either appeal, and counsel for Bill Hardin advised the Court in a hearing conducted on November 3, 1983 that these appeals have been abandoned.

Factual and Procedural Background

Appellant Bill Hardin and Appellee Joan Murle Hardin were divorced in 1976. As provided by their property settlement, Mrs. Hardin sold her one half community interest in a 154 acre tract in Comanche and Erath Counties to Mr. Hardin, who executed a $25,000 promissory note, with the farm as security. Payments of $1,500.00 were to be made annually. Mr. Hardin made the first annual installment on time on December 31, 1976, but did not make a payment on December 31, 1977 and has not made a subsequent payment as they came due.

Mrs. Hardin sued him in state court in 1978 on the unpaid balance and for foreclosure and obtained an order that the note be accelerated and that the deed of trust lien be fore-

closed. The Texas Court of Appeals reversed the decision. However, the Texas Supreme Court affirmed the district court and ordered a sheriff's sale of the property. Hardin v. Hardin, 597 S.W.2d 347 (Tex. 1980). Before the property was sold, Mr. Hardin filed for bankruptcy under Chapter 13 in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, on October 31, 1980. On December 11, 1980 he filed a plan of reorganization, to which Mrs. Hardin objected.

On January 27, 1982 the bankruptcy court held that Mr. Hardin could deaccelerate the note without curing the default, but that he must compensate Mrs. Hardin for any damages she had suffered as a result of the deacceleration. Mr. Hardin did not file an amended Chapter 13 plan by the April 19, 1982 deadline set by the court. Accordingly, the bankruptcy court held a hearing on June 16, 1982 on Mrs. Hardin's application to convert the case to one under Chapter 7. On that date Mr. Hardin submitted an amended plan, which provided that Mrs. Hardin accept a lifetime one-half share in all income from the 154 acres in satisfaction of her claims. Mrs. Hardin rejected that plan and the court converted the proceeding to one under Chapter 7.

Mr. Hardin's subsequent motion to convert the proceeding to one under Chapter 11 was denied after a hearing on September 15, 1982. On September 22, 1982, a hearing was conducted on the issue of whether Mr. Hardin could claim the 154 acre tract as his homestead. The bankruptcy court ruled that he could not.

Discussion

I. Order Denying Motion to Convert to Chapter 11 Proceeding

On October 13, 1982, the bankruptcy court denied Mr. Hardin's motion to convert from a proceeding under Chapter 7 to one under Chapter 11. He appeals from that order. Whether to convert a case from Chapter 7 to Chapter 11 is discretionary with the bankruptcy judge, pursuant to 11 U.S.C. § 706(b), which provides: "On request of a party in interest and after notice and hearing the Court may convert a case under this Chapter to a case under Chapter 11 of this title at any time."

After a hearing on September 15, 1982 the bankruptcy court denied the motion to convert, based primarily on three factors. First, the bankruptcy court considered that Mr. Hardin had been in default on the $1,500.00 annual payments due to Mrs. Hardin since failing to make the second payment on

December 31, 1977. Second, he had not submitted a viable plan for reorganization since he had filed for bankruptcy in October 1980 and had not met the court's deadline of April 19, 1982 to submit an amended plan, after his first plan had been rejected by Mrs. Hardin. The amended plan submitted on June 16, 1982 provided that Mr. Hardin pay her no money, but that she agree to accept a lifetime one-half interest in all income derived from the property. Third, on June 16, 1982, Mr. Hardin testified before the bankruptcy court that he would not pay Mrs. Hardin the damages for deacceleration as ordered by the court.

The bankruptcy court was clearly within its discretion to deny the motion to convert the proceeding from Chapter 7 to Chapter 11, in light of the circumstances.

II. Order on Trustee's Objection to the Debtor's Claimed Exemptions

Mr. Hardin also appeals from the decision of the bankruptcy court that he cannot claim the 154 acre rural tract as his homestead, so as to exempt it from forced sale. In his Chapter 13 statement filed December 11, 1980, he claimed both a house and lot in DeLeon, Texas, which he has owned

since 1977 or 1978 and the 154 acre farm tract as his homestead. The bankruptcy court after a hearing, concluded that the 154 acre tract was not homestead based on the principles announced in Cheswick v. Freeman 287 S.W.2d 171 (Tex. 1956) and Gilmore v. Dennison, 115 S.W.2d 902 (Tex. Comm. App. 1938).

It is clear under Texas law that a party cannot have an urban homestead and a rural homestead at the same time. R. B. Spencer & Company v. Green, 203 S.W.2d 957 (Tex. Civ. App. – El Paso 1947); Wallingford v. Bowen, 104 S.W.2d 188 (Tex. Civ. App. – Amarillo 1937). The bankruptcy court applied the law of Gilmore v. Dennison, supra, which contained facts very similar to those presented here. The Texas Commission of Appeals held that in order to impress a homestead character upon property, in the absence of actually occupying it, the head of the family must intend to reside upon it and must take some overt act of preparation showing that intention. The record in this case shows that Mr. and Mrs. Hardin purchased the rural property in 1955 but have never lived on it or in any way prepared to live on it, such as by constructing some type of dwelling. To the contrary, in 1977 or 1978

Mr. Hardin purchased a house and lot in DeLeon, which he had been renting since 1965. He has used the ranch land only for farming and on occasion for leasing a portion to others for farm use.

Mr. Hardin contends that the farm is his business homestead and the DeLeon house is his resident homestead. The Court has found no authority to support his contention that rural land can be considered homestead solely because of a business use, in the absence of simultaneous use as a residence. See R. B. Spencer & Co. v. Green, supra at 959. However, this contention, even if viable, is foreclosed by the rule against claiming both an urban and a rural homestead.

Findings of Fact

1. On October 13, 1982, the United States Bankruptcy Court for the Northern District of Texas, Fort Worth, Texas, issued an order denying the motion of Appellant Bill Hardin to convert his bankruptcy proceeding from one under Chapter 7 to one under Chapter 11. On October 27, 1982 the bankruptcy court issued an order holding that appellant could not claim a 154 acre tract as his homestead. The orders have been appealed to this Court pursuant to Paragraph (e) (2) (A) (i) of the Local Rule.

2. Mr. Hardin executed a $25,000 note, secured by a deed of trust on the 154 acre tract, payable to Mrs. Hardin for her one-half community interest.

3. Mr. Hardin made the first annual payment due on the note on December 31, 1976 but has been in default since December 31, 1977.

4. Mr. Hardin filed for Chapter 13 bankruptcy on October 31, 1980 and submitted a reorganization plan which was rejected by Mrs. Hardin. He did not meet the April 19, 1982 deadline set by the bankruptcy court for filing an amended plan, but did submit an amended plan on June 16, 1982, which was also rejected by Mrs. Hardin.

5. Before the bankruptcy court on June 16, 1982 Mr. Hardin testified that he would not pay Mrs. Hardin the amounts ordered by the bankruptcy court to compensate her for any damages caused by the deacceleration of the note.

6. The bankruptcy court on June 16, 1982 converted the case to Chapter 7 and on October 13, 1982 denied appellant's motion to convert to Chapter 11.

7. Mr. and Mrs. Hardin bought the 154 acre tract in 1955 and have never lived on it or taken any action to prepare

the tract for living on it. The land has been used solely for farming, either by Mr. Hardin or by various lessees.

8. Mr. Hardin has lived continuously in a house in DeLeon, Texas since 1965. He rented the house for some twelve years and purchased it in 1977 or 1978.

9. Any finding of fact which is deemed to be a conclusion of law is hereby made a conclusion of law.

CONCLUSIONS OF LAW

1. Pursuant to 11 U.S.C. § 706(b) it is within the discretion of the bankruptcy court whether to convert a case under Chapter 7 to a case under Chapter 11.

2. In light of appellant's failure to make timely payments on the promissory note to Mrs. Hardin beginning on December 31, 1977, his failure to submit a viable reorganization plan and his statement that he would not pay Mrs. Hardin the sums ordered by the court, the bankruptcy court did not abuse its discretion in denying appellant's motion to convert from Chapter 7 to Chapter 11.

3. In Texas a party may not claim both an urban and a rural homestead. R. B. Spencer & Co., supra. In order to claim property as homestead, the party must either live on the

the property or in the alternative, must intend to live on the property and must take some overt act in preparation to take up residence. Cheswick v. Freeman, supra. Because Plaintiff has continuously lived in DeLeon, Texas, has used the 154 acre tract only for farming and has taken no action to prepare to take up residence on the tract, the bankruptcy court was correct in finding that appellant cannot claim the rural tract as homestead. The Court makes this conclusion giving no deference to the findings of the bankruptcy judge as ordered by Paragraph (e) (2) (B) of the Local Rule.

4. Any conclusion of law which is deemed to be a finding of fact is hereby made a finding of fact.

Signed this 30th day of November, 1983.

Signed by: ELDON B. MAHON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE

JOAN MURLE HARDIN	§	
	§	CIVIL ACTION No.
VS.	§	4-82-595-E
	§	(Consolidated with
LAVOID WAYNE "BILL" HARDIN	§	4-82-597-E)

ORDER

On November 30, 1983, the Court affirmed the order of Bankruptcy Judge John Flowers denying Lavoid Wayne "Bill" Hardin's Motion to Convert to Chapter 11 Proceeding and affirmed the Order on the Trustee's Objections to the Debtor's Claimed Exemptions.

On December 30, 1983, Appellant filed a Notice of appeal to the United States Court of Appeals, Fifth Circuit. The issue on appeal is the Debtor's right to claim as his homestead property 154 acres in Comanche and Erath Counties, Texas. Appellant has never lived on the property but has used it for farming and for lease to others for farming purposes. Appellant purchased a home in DeLeon, Texas in 1977 or 1978 and has lived there continuously since 1965, having rented the house for several years before purchasing it. The Court ruled that

Appellant may not claim the rural land as homestead because he never lived on the land or made overt acts in preparation to live on the land. In addition, the Court ruled that in Texas an individual may not claim both an urban and a rural homestead.

Appellent seeks an order staying the enforcement of the judgment in this action pending the disposition of his appeal. He moves the Court to stay the sale of the 154 acres in question by the Trustee in Bankruptcy pending disposition of the appeal and further moves the Court to waive the requirement of a supersedeas bond. Appellant asserts that because the judgment pertains to the sale of real property, rather than to the recovery of a money judgment, there is adequate security and plaintiff will not suffer harm from an order staying the sale.

Under Rule 62(d) of the Federal Rules of Civil Procedure, when an appeal is taken the appellant by giving a supersedeas bond may obtain a stay. Former Rule 73(d) of the Federal Rules of Civil Procedure provided guidance in determining the amount of the bond which should be required. The Rule provided: "When the judgment determines the disposition of the property in controversy as in real actions . . . the amount

of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest and damages for delay."

Appellant has moved the Court to waive the requirement of a supersedeas bond. However, the circumstances are such that the Court declines to do so. Appellant and his wife and principal debtor, Joan Murle Hardin, were divorced in 1976. As a condition of the divorce settlement he executed a $25,000 promissory note to her for her community one-half interest in the 154 acres, payable in yearly installments of $1,500.00, with the land as security. Appellant made the first yearly installment and has not made a payment since 1976. Mrs. Hardin sued him in state court in 1978 and obtained an order that the note be accelerated and that the deed of trust lien be foreclosed, which was upheld on appeal by the Texas Supreme Court. However, Appellant filed for bankruptcy in October 1980 before the property was sold.

The case was in bankruptcy court for three years and during that time Appellant did not submit a Chapter 13 plan which was acceptable to Mrs. Hardin. Appellant proposed only

that in lieu of the $25,000 debt Mrs. Hardin accept a lifeti one-half share in all income from the 154 acres. In additi Appellant testified before the bankruptcy court on June 1982 that he would not pay Mrs. Hardin the damages deacceleration of the note as ordered by the court.

The Court finds that Appellant has defaulted on $25,000 promissory note, has not made a payment to M Hardin since December 1976 and had sufficient opportunity arrive at a Chapter 13 plan but failed to do so, resulting in conversion to Chapter 7. His claim on appeal is that he shou be allowed to claim the 154 acres as a rural homestead, desp the fact that he has never lived on the land or made a preparatory to living on the land, such as construction o house. Appellant owns a house in DeLeon, Texas, where lives, which he also claimed in bankruptcy court as his hon stead. He may not claim both an urban and rural homestead

Because the Court finds that Appellant has little char of success on appeal and the circumstances are such that sale of the property so that Mrs. Hardin may recover money which has been owed to her since 1977 should n be delayed further, it is ORDERED that the motion

waiver of the supersedeas bond be DENIED.

Signed this 9th day of January, 1984.

Signed by: ELDON B. MAHON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CLIFFORD F. McMASTER, TRUSTEE	§	
	§	MISCELLANEOUS
VS.	§	BANKRUPTCY
	§	NO. BK.
LAVOYD WAYNE "BILL" HARDIN, and J. A. HARDIN	§	4-84-4-E
	§	

ORDER TO SHOW CAUSE

The Court has before it the motion of Trustee Clifford F. McMaster for issuance of an order to show cause and for contempt.

After consideration of the motion, the Court finds that it has merit. Accordingly, it is ORDERED that Lavoyd Wayne "Bill" Hardin and A. J. Hardin appear in the Fourth Floor Courtroom, United States Courthouse, Fort Worth, Texas at 1:15 p.m. on February 22, 1984 to show cause why they should not be held in contempt of this Court.

Signed this 15th day of February, 1984.

Signed by: ELDON B. MAHON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	◊	
	◊	CASE NO.
LAVOYD WAYNE "BILL" HARDIN	◊	480-00513
	◊	
Debtor	◊	Chapter 7
	◊	
CLIFFORD F. McMASTER, TRUSTEE	◊	
	◊	
Plaintiff	◊	
	◊	
VS.	◊	ADVERSARY
	◊	
LAVOYD WAYNE "BILL" HARDIN, et al	◊	NO. 483-0490
	◊	
Defendants	◊	

ORDER DIRECTING VETERAN'S LAND BOARD OF THE STATE OF TEXAS TO TRANSFER PROPERTY TO CLIFFORD F. McMASTER, TRUSTEE

At Fort Worth, Texas, in said District, on the 13th day of February, 1984, came on for consideration the Application filed by Clifford F. McMaster, Trustee, to compel the Veteran's Land Board of the State of Texas, and J. A. Hardin of Route 1, DeLeon, Texas, to transfer and deliver to Clifford F. McMaster, Trustee, title to a certain tract of 154 acres located in Comanche and Erath counties of the State of Texas, all as set forth in the Application on file herein; and the Court being satisfied that

service was had upon the Veteran's Land Board of the State of Texas in accordance with the Bankruptcy Code; and no answer having been filed herein; the Court hereby finds that as of the filing date of the petition on October 31, 1980, title to the property that is the subject of the Trustee's Application was divested from the Debtor, Lavoyd Wayne "Bill" Hardin, and vested by operation of law in the Debtor's estate, solely subject to further orders of this Court; and that said property did not consist in whole or in part of the homestead of the Debtor; and that the appeal of said exemption has not been stayed by the United States Fifth Circuit Court of Appeals; and further finds that the action of the Debtor, Lavoyd Wayne "Bill" Hardin in assigning his interest under a Veteran's Land Board contract was in contravention of the Bankruptcy Code; it is therefore

ORDERED that the assignment of contract of Veteran's Land Board contract of sale and purchase between Lavoyd Wayne Hardin and J. A. Hardin dated August 24, 1983, and recorded in Volume 564, at Page 360, of the Deed Records of Comanche County, Texas, and Volume 620, at Page 657, of the Deed Records of Erath County, Texas, be, and it is hereby declared null and void; and it is further

ORDERED that the deed of the Veteran's Land Board of the State of Texas under date of January 6, 1984, to J. A. Hardin, Route 1, DeLeon, Texas 76444, filed of record in Volume 570, at Page 206, of the Deed Records of Comanche County, Texas, and filed of record in Volume 624, at Page 959, of the Deed Records of Erath County, Texas, be, and it is hereby declared null and void; and it is further

ORDERED that the Application of the Trustee is hereby granted, and the Veteran's Land Board of the State of Texas be, and it is hereby, directed to transfer and deed to Clifford F. McMaster, Trustee, the following property:

> That 154.3 acre tract situated in the M. V. Robinson and the T. E. Ely Surveys, Comanche and Erath Counties, Texas, described by metes and bounds in the Warranty Deed to the Veterans Land Board dated September 22, 1955, recorded in Vol. 284, page 316, Comanche County, Texas, and recorded in Vol. 351, page 404, Erath County, Texas; and also further described in that Contract of Sale dated September 20, 1955, recorded in Vol. 284, page 317, Comanche County, Texas, and recorded in Vol. 351, page 406, Erath County, Texas; and assigned on August 24, 1983 to J. A. Hardin.

ENTERED this 19th day of February, 1984.

Signed by: MICHAEL A. McCONNELL,
BANKRUPTCY JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CLIFFORD F. McMASTER, TRUSTEE	§	
	§	MISCELLANEOUS
VS.	§	BK. 4-84-4-E
	§	
LAVOYD WAYNE "BILL" HARDIN, and J. A. HARDIN	§	

SUPPLEMENTAL ORDER TO SHOW CAUSE

The Court has before it the Motion of Trustee Clifford F. McMaster for issuance of an Order to Show Cause and for Contempt in connection with the conveyance of 154 acres in Comanche and Erath Counties, Texas, which is described in attached Exhibit A, from Lavoyd Wayne "Bill" Hardin to J. A. Hardin, said property being an asset of the estate in bankruptcy of Bill Hardin.

After consideration of the Motion, the Court finds that it has merit. Accordingly, it is ORDERED that J. A. Hardin appear in the Fourth Floor Courtroom, United States Courthouse, Fort Worth, Texas at 3:30 p.m. on March 9, 1984, to show cause why he should not be held in contempt of Court in connection with this conveyance.

However, the Court advises J. A. Hardin that if he executes a warranty deed transferring title to the 154 acres

to Trustee Clifford McMaster and delivers it to Joseph Colvin, Fort Worth, Texas by 5:00 p.m. on March 8, 1984 and advises the Court that he has done so, he is not required to appear at the Courthouse at 3:30 p.m. on March 9, 1984 for the show cause hearing. If the deed is executed and delivered to Joseph Colvin according to the terms of this order, this Order to Show Cause and the show cause hearing will be cancelled.

Signed this 1st day of March, 1984.

Signed by: ELDON B. MAHON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	§	
	§	CASE NO.
LAVOYD WAYNE "BILL" HARDIN	§	480-00513
	§	
Debtor	§	Chapter 7
	§	
CLIFFORD F. McMASTER, TRUSTEE	§	
	§	
	§	
Plaintiff	§	
	§	
VS.	§	ADVERSARY NO.
	§	
LAVOYD WAYNE "BILL" HARDIN, et al	§	483-0490
	§	
	§	
Defendants	§	

ORDER DIRECTING J. A. HARDIN TO TRANSFER PROPERTY TO CLIFFORD F. McMASTER, TRUSTEE

At Fort Worth, Texas, in said District, on the 8th day of March, 1984, came on for consideration the Application filed by Clifford F. McMaster, Trustee, to compel J. A. Hardin of Route 1, Lynchburg, Tennessee, to transfer and deliver to Clifford F. McMaster, Trustee, title to a certain tract of 154 acres located in Comanche and Erath counties of the State of Texas, all as set forth in the Application on file herein; and the Court being satisfied that service was had upon J. A. Hardin

in accordance with the Bankruptcy Code; and no answer having been filed herein; and the Court having considered the testimony of J. A. Hardin, Lavoyd Wayne Hardin, the exhibits, and pleadings; the Court hereby finds that as of the filing date of the petition on October 31, 1980, title to the property that is the subject of the Trustee's Application was divested from the Debtor, Lavoyd Wayne "Bill" Hardin, and vested by operation of law in the Debtor's estate, solely subject to further orders of this Court; and that said property did not consist in whole or in part of the homestead of the Debtor; and that the appeal of said exemption has not been stayed by the United States Fifth Circuit Court of Appeals; and further finds that the action of the Debtor, Lavoyd Wayne "Bill" Hardin in assigning his interest under a Veteran's Land Board contract was in contravention of the Bankruptcy Code; it is therefore

ORDERED that the assignment of contract of Veteran's Land Board contract of sale and purchase between Lavoyd Wayne Hardin and J. A. Hardin dated August 24, 1983, and recorded in Volume 564, at Page 360, of the Deed Records of Comanche County, Texas, and Volume 620, at Page 657, of the Deed Records of Erath County, Texas, be, and it is hereby declared null and void; and it is further

ORDERED that the deed of the Veteran's Land Board of the State of Texas under date of January 6, 1984, to J. A. Hardin, Route 1, DeLeon, Texas 76444, filed of record in Volume 570, at Page 206, of the Deed Records of Comanche County, Texas, and filed of record in Volume 624, at Page 959, of the Deed Records of Erath County, Texas, be, and it is hereby declared null and void; and it is further

ORDERED that the Application of the Trustee is hereby granted, and J. A. Hardin be, and he is hereby, directed to transfer and deed to Clifford F. McMaster, Trustee, the following property:

> That 154.3 acre tract situated in the M. V. Robinson and T. E. Ely Surveys, Comanche and Erath Counties, Texas, described by metes and bounds in the Warranty Deed to the Veterans Land Board dated September 22, 1955, recorded in Vol. 284, page 316, Comanche County, Texas, and recorded in Vol. 351, page 404, Erath County, Texas; and also further described in that Contract of Sale dated September 20, 1955, recorded in Vol. 284, page 317, Comanche County, Texas, and recorded in Vol. 351, page 406, Erath County, Texas, and assigned on August 24, 1983 to Ja. A. Hardin.

In the event J. A. Hardin does not transfer and deed such property to the Trustee, Clifford F. McMaster, within 10 days from date hereof, Clifford F. McMaster is hereby authorized and directed to execute such a deed on behalf

of and in the name of J. A. Hardin.

ENTERED this 9th day of March, 1984.

Signed by: MICHAEL A. McCONNELL,
BANKRUPTCY JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CLIFFORD F. McMASTER, TRUSTEE	§	
	§	MISC. BK. NO.
VS.	§	
	§	4-84-4-E
LAVOYD WAYNE "BILL" HARDIN J. A. Hardin	§	

ORDER

On March 9, 1984 the Court held a hearing on the amended motion of Trustee Clifford McMaster to show cause and for contempt. J. A. Hardin was ordered to appear before the Court to show cause why he should not be held in contempt of Court in connection with his purchase of 154 acres in Comanche and Erath Counties, Texas from Bill Hardin, such land being an asset of the estate in bankruptcy of Bill Hardin.

Also on March 9, 1984 the Bankruptcy Court of the Fort Worth Division of the Northern District of Texas ordered J. A. Hardin to transfer and deed the 154 acres to Trustee Clifford F. McMaster within ten days from the date of the order. The order provided that if J. A. Hardin does not make such a transfer within the ten day deadline, Clifford F.

McMaster is authorized to execute such a deed on behalf of and in the name of J. A. Hardin.

Accordingly, the Court continues the hearing to show cause and for contempt as to J. A. Hardin to March 20, 1984 at 1:15 p.m. in the Fourth Floor Courtroom, United States Courthouse, Fort Worth, Texas. In the event that J. A. Hardin does execute the deed to the 154 acres to Trustee Clifford McMaster as ordered by the Bankruptcy Court on or before March 19, 1984, J. A. Hardin is not required to appear before this Court at 1:15 p.m. on March 20, 1984.

This amended motion of Trustee Clifford McMaster to show cause and for contempt against Bill Hardin is still before the Court for consideration.

Signed this 9th day of March, 1984.

Signed by: ELDON B. MAHON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:		
LAVOYD WAYNE "BILL" HARDIN	§	
	§	CIVIL ACTION
VS.	§	
	§	NO. 4-84-146-E
CLIFFORD F. McMASTER	§	

ORDER

Lavoyd Wayne "Bill" Hardin appeals from an order entered by U. S. Bankruptcy Judge Michael McConnell on March 9, 1984. The effect of the order was to nullify a deed from the Veterans Land Board of the State of Texas to J. A. Hardin to 154 acres of land in Comanche and Erath Counties, Texas and to compel J. A. Hardin to transfer title to the land to Clifford F. McMaster, Trustee. Appellant purported to transfer his rights to the land, which is the principal asset of his estate in bankruptcy, to J. A. Hardin on August 24, 1983 through assignment of his contract with the Veterans Land Board.

Initially, the Court notes that the notice of appeal, which is file stamped March 20, 1984, was not timely filed under Bankruptcy Rule 8002 and Local Rule of the Northern District

of Texas Concerning Bankruptcy Cases and Proceedings, Section (e). However, because appellant dated his notice of appeal March 19, 1984 and to avoid any conflict regarding timely filing of notice of appeal, the Court will consider the merits of appellant's claim.

Appellant asserts that the Bankruptcy Court abused its discretion by declaring the deed void while Hardin's appeal from this Court's decision in In Re Joan Murle Hardin v. Lavoyd Wayne "Bill" Hardin, Civil Action No. 4-82-595-E is pending before the Fifth Circuit Court of Appeals. There, this Court upheld the decision of the Bankruptcy Court that the 154 acre tract is not homestead and accordingly is not exempt from sale. The Court found that appellant had never lived on the property or made overt acts of preparation to live on the property. In addition, the Court found that plaintiff owns a house in DeLeon, Texas, where he has lived since 1965, which he also claimed as homestead. Both this Court and the Fifth Circuit Court of Appeals refused to stay sale of the land pending review of the homestead issue on appeal.

Therefore, the Court finds that the Bankruptcy Court acted properly in voiding the transfer of title to the land to

J. A. Hardin. Appellant may not transfer title to property which belongs to his estate. Both this Court and the Fifth Circuit Court of Appeals have refused to stay sale of the 154 acre tract pending appellate review of the homestead issue. Accordingly, invalidation of the deed, which merely removes an obstacle preventing sale of the property, has not been stayed. Therefore, the Court ORDERS that the Order Directing J. A. Hardin to Transfer Property to Clifford F. McMaster, Trustee, entered on March 9, 1984 is proper and the decision of the Bankruptcy Court is AFFIRMED.

Signed this 24th day of April, 1984.

Signed by: ELDON B. MAHON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	◊	
	◊	CASE NO.
LAVOYD WAYNE "BILL" HARDIN	◊	480-00513
	◊	Chapter 13
DEBTOR	◊	

SHOW CAUSE ORDER

Came on to be considered on the date hereinafter written the Motion For Temporary Restraining Order and Permanent Injunction heretofore filed by Movants, James Robert Arthur and Trustee, Clifford F. McMaster, the same being verified by Movant, James Robert Arthur, and the court having considered the same, the court finds that the following Temporary Restraining Order should be issued, without notice to Respondent, until a hearing can be had hereon;

It is, therefore, ORDERED that Respondent, Lavoyd Wayne "Bill" Hardin, be temporarily restrained and enjoined from coming upon, trespassing upon, or otherwise exercising control over the following described real estate until hearing can be had:

(See legal description of 154.3 acres.)

It is, further, ORDERED that Respondent, Lavoyd Wayne

"Bill" Hardin shall appear before this court at 206 U. S. Courthouse, Fort Worth, Texas, at 9:30 o'clock a.m., on the 25th day of May, 1984 to show cause why said temporary restraining order should not be made into a permanent and perpetual injunction, and to show cause why this court should not enter such other appropriate orders to put Movant, James Robert Arthur, in the exclusive possession and control of the real estate described herein, and to show cause why the court should not enter such other orders as may be appropriate under the circumstances and facts of the case;

SIGNED AND ENTERED this the 19th day of May, 1984.

Signed by: MICHAEL A. McCONNELL,
JUDGE PRESIDING

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	§	BANKRUPTCY
	§	
LAVOYD WAYNE "BILL" HARDIN	§	NO. 480-00513
	§	
Debtor	§	
	§	
CLIFFORD F. McMASTER, TRUSTEE	§	
	§	
Plaintiff	§	
	§	
VS.	§	
	§	
LAVOYD WAYNE "BILL" HARDIN ET AL	§	ADVERSARY
	§	
	§	NO. 484-4099
Defendants	§	

ORDER

At Fort Worth, Texas, in said District on the 21st day of May, 1984, came on for hearing the Complaint filed herein by Clifford F. McMaster, Trustee, Plaintiff, and the Court being satisfied that service was made or attempted in accordance with the Bankruptcy Code upon Defendant Lavoyd Wayne "Bill" Hardin and J. A. Hardin, and Defendant Joan Murle Hardin having appeared, and St. Clair Newbern, attorney for Lavoyd Wayne "Bill" Hardin, having intervened, and the Court being of the opinion that while these matters were set for pretrial, that a trial on the merits should be held, and no

party objecting thereto, and the Court having considered the documents entered into evidence finds:

1. The amount of the Judgment entered in the State Court proceeding including principal, interest and attorneys fees equals $26,480.14.

2. Interest accruing on such Judgment from date of entry until this hearing equals $13,228.46.

3. Losses and damages determined in the Lavoyd Wayne "Bill" Hardin Chapter 13 Order of June 16, 1982, includes State Court costs of $392.00, travel of $200.00, lost wages of $144.00 and bankruptcy attorneys fees of $3,013.39.

4. The Court further finds that pursuant to the Bankruptcy Code, Joan Murle Hardin is entitled to reimbursement and attorneys fees from June 1982, until the present time of $8,100.00, and reimbursement of expenses of $491.30.

The Court hereby allows Joan Murle Hardin a secured claim in these proceedings in the sum of $52,048.99, and ORDERS same paid as follows:

Gilbert & Colvin	Fee	$11,113.39
	Expenses	$ 491.30
Ben D. Sudderth	Fee	$ 3,523.97
	Expenses	$ 392.00

Joan Murle Hardin	$36,528.33
TOTAL SECURED CLAIM	$52,048.99

Signed this 21st day of May, 1984.

Signed by: MICHAEL A. McCONNELL
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	§	CASE NO.
	§	
LAVOYD WAYNE "BILL" HARDIN	§	480-00513
	§	
Debtor	§	Chapter 7
	§	
JAMES ROBERT ARTHUR	§	
	§	
Plaintiff	§	
	§	
VS.	§	ADVERSARY NO.
	§	
LAVOYD WAYNE "BILL" HARDIN	§	484-4141
	§	
Defendant	§	

ORDER

Came on to be considered on the 25th day of May, 1984, the Motion for Temporary Restraining Order and Permanent Injunction heretofore filed by James Robert Arthur and Clifford McMaster, Movants, the same having been set for hearing at this time and day; and movants appeared in person and by attorney, and Respondent, Lavoyd Wayne "Bill" Hardin, appeared in person; and all parties announced ready; and the Court having examined the pleadings on file herein; the Court finds that Respondent received notice of such hearing as required by law; and the Court took judicial notice of all

proceedings that have occurred heretofore in this cause; and the Court proceeded to hear the evidence and arguments of counsel; the Court finds that it has jurisdiction of such matter and the parties herein, and that all prerequisites of the law have been duly complied with, and that the following Order should be entered;

IT IS, THEREFORE, ORDERED that the Temporary Restraining Order and Permanent Injunction hearing be combined;

IT IS, FURTHER, ORDERED that a final, permanent and perpetual injunction shall issue against Respondent, Lavoyd Wayne "Bill" Hardin, permanently and perpetually enjoining Respondent from coming upon, trespassing upon, or otherwise exercising control over the following described real estate, to-wit:

SEE ATTACHED EXHIBIT A.

IT IS, FURTHER, ORDERED that Respondent, Lavoyd Wayne "Bill" Hardin, be permanently and perpetually enjoined from interfering with or taking any action against Movant, James Robert Arthur, his successors or assigns, in his use, enjoyment, possession, control, of the real property herein-

above described.

SIGNED this 25th day of May, 1984.

Signed by: MICHAEL A. McCONNELL,
BANKRUPTCY JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN D.STRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

LAVOYD WAYNE "BILL" HARDIN	∮	CIVIL ACTION
	∮	
VS.	∮	NO. 4-84-239-E
	∮	
CLIFFORD F. McMASTER, TRUSTEE	∮	

ORDER

Lavoyd Wayne "Bill" Hardin appeals from the May 21, 1984 order entered by Bankruptcy Judge Michael McConnell providing for disbursement of the proceeds from the sale of appellant's principal asset, 154 acres in Comanche and Erath Counties, under Chapter 7 of the Bankruptcy Code. A hearing was held in the Bankruptcy Court on May 21, 1984. The trustee, appellant's former attorney and the attorney for appellant's principal creditor, Joan Murle Hardin, appeared. The Court allowed Mrs. Hardin a secured claim in the amount of $52,048.99 and ordered the payment of certain attorneys' fees and expenses.

Appellant offers two grounds for appeal. First, he asserts that he did not receive proper notice of the hearing and therefore was not afforded the opportunity to appear. In addition,

he asserts that a state district court opinion which provided the basis for Mrs. Hardin's secured claim was invalid.

The Court is well aware of the history of appellant's bankruptcy proceedings and his intransigent behavior, which has resulted in numerous delays and several previous appeals to this Court. The record of the May 21, 1984 hearing in the Bankruptcy Court shows that attempts to serve him were made on May 1, 1984 and May 7, 1984, but were returned unclaimed. The Court accepts Judge McConnell's finding that service was made or attempted in accordance with the Bankruptcy Code, Rule 7004.

Appellant argues also that the district court opinion by Judge Andrew Campbell upholding Mrs. Hardin's claim to the property is invalid. Appellant and Mrs. Hardin were divorced in 1976. As provided in their property settlement, she sold her one half community interest in the 154 acre tract to appellant, who executed a $25,000 promissory note with the farm as security. Payments of $1,500 were to be made annually. However, appellant made the first installment on December 31, 1976 but has failed to make any subsequent payments as they came due. Mrs. Hardin sued him in state court in 1978 on

the unpaid balance and obtained an order that the note be accelerated and that the deed of trust lien be foreclosed. The decision was reversed by the Texas Court of Appeals. However, the Texas Supreme Court affirmed the district court's opinion and ordered a sheriff's sale of the property. Hardin v. Hardin, 597 S.W.2d 347 (Tex. 1980). Because of the subsequent bankruptcy proceedings instituted by appellant, the property was not sold until May 1984.

Appellant attacks the district court opinion on the ground that Judge Campbell had once served as appellant's attorney and continued to have bitter feelings toward appellant. The Court finds that the district court's opinion has been reviewed and upheld by the Texas Supreme Court and that no further review by this Court is appropriate or necessary.

The Court finds that notice was proper under the Bankruptcy Code and that the state district court's opinion accelerating the note and foreclosing the deed of trust lien on the 154 acres is valid. Accordingly, the May 21, 1984 decision of the Bankruptcy Court is AFFIRMED.

Signed this 27th day of June, 1984.

Signed by: ELDON B. MAHON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:		
LAVOYD WAYNE "BILL" HARDIN	§	
	§	CIVIL ACTION
VS.	§	
	§	NO. 4-84-240-E
JAMES ROBERT ARTHUR	§	

ORDER

Lavoyd Wayne "Bill" Hardin appeals from the May 25, 1984 order entered by Bankruptcy Judge Michael McConnell enjoining Mr. Hardin from "coming upon, trespassing upon, or otherwise exercising control" over certain real estate and enjoining him from interfering with or taking any action against James Robert Arthur, the owner of the real estate in question. The property at issue had been part of Mr. Hardin's estate but was sold under Court authority by Trustee Clifford McMaster in January 1984 to Mr. Arthur. The record shows that since the conveyance Mr. Hardin has removed a chain and lock placed by Mr. Arthur on the entrance to the property and attached his own chain and lock thereto. Mr. Hardin also testified that he has planted a crop on the land since the conveyance and has some farm equipment on the property.

Appellant offers three grounds for appeal. First, he contends that Judge McConnell abused his discretion by calling this matter to trial because he has appealed to the Fifth Circuit the conversion of his case from Chapter 13 to Chapter 7. Second, he claims that Judge McConnell abused his discretion by calling this matter to trial because he has appealed to the Fifth Circuit the validity of the trustee's appointment and subsequent conveyance of the real estate in question. Lastly, he contends that Judge McConnell abused his discretion by issuing an injunction after Mr. Hardin had planted a crop on the land.

As to Mr. Hardin's first two claims, it must be noted that no stay has been issued by this Court or the Fifth Circuit pending consideration of those appeals. Mr. Hardin's third claim also is meritless. The record clearly shows that Mr. Hardin planted his crop with due notice of the conveyance of the property to Mr. Arthur, and, therefore knew that the land was no longer his. The law will not protect him from any loss due to his subsequent planting of the land.

For the heretofore mentioned reasons the May 25, 1984 decision of the Bankruptcy Court is AFFIRMED.

Signed this 28th day of June, 1984. Signed by: ELDON B. MAHON, UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	CASE NO.
LAVOYD WAYNE "BILL" HARDIN,	§	
	§	480-00513
DEBTOR	§	

ORDER ALLOWING INTERIM AWARD OF COMPENSATION AND REIMBURSEMENT FOR EXPENSES

At Fort Worth, Texas, in said District, on the 23rd day of April, 1985, came on for consideration the Application for Interim Award of Compensation and Reimbursement for Expenses filed herein by Gilbert & Colvin and the court having reviewed the application, having heard the testimony of the witnesses, and being of the opinion that same should be allowed as prayed for, it is therefore

ORDERED that Gilbert & Colvin be and is hereby allowed an allowance of compensation of $7,410.00 and further allowed expense of $574.19 of which amount the Trustee is hereby ordered to pay $574.19 and the balance of the allowed claim of $7,410.00 is passed for later consideration.

SIGNED this 29th day of April, 1985.

Signed by: MICHAEL McCONNELL,
BANKRUPTCY JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 85-1726
Summary Calendar

LAVOYD WAYNE HARDIN,
a/k/a/ BILL HARDIN,

Plaintiff-Appellant,

versus

GILBERT & COLVIN,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas

(March 17, 1986)

Before RUBIN, JOHNSON, and JONES, Circuit Judges.

PER CURIAM:

The judgment of the district court is AFFIRMED. See Local Rule 47.6. Appellant has previously submitted numerous frivolous appeals to this Court. While this Court will not exercise its discretion to impose sanctions on this appeal, further abuse of the appellate process will not be tolerated. Therefore, appellee's motion for sanctions is DENIED. See Fed. R. App. P. 38.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 85-1686

Summary Calendar

LAVOYD WAYNE HARDIN, a/k/a
BILL HARIN, Debtor

LAVOYD WAYNE HARDIN, a/k/a
BILL HARDIN,

Plaintiff-Appellant,

versus

GILBERT & COLVIN,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas

(February 24, 1986)

Before REAVLEY, HIGGINBOTHAM, and HILL, Circuit Judges.

PER CURIAM:*

---

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

This is the sixth time that appellant, Lavoyd Wayne "Bill" Hardin, has perfected an appeal in a matter relating to his bankrupt estate. See Hardin v. Hardin, No. 84-1250 (5th Cir. May 24, 1984) (dismissed for failure to file briefs); Hardin v. Hardin, No. 84-1037 (5th Cir. Aug. 22, 1984) (per curiam); Hardin v. McMaster, No. 84-1396 (5th Cir. Sept. 26, 1984) (per curiam); Hardin v. McMaster, No. 84-1614 (5th Cir. Dec. 20, 1984) (per curiam); Hardin v. Arthur, No. 84-1615 (5th Cir. Dec. 20, 1984) (per curiam). In the instant appeal Hardin appeals from an order by the bankruptcy court granting an interim award to the Trustee for attorney's fees, commission and expenses. Hardin's challenge to this award is based on allegations that the trustee, his attorneys, and other have deprived him of "his constitutional right, his life's sweat and labor and every asset that he has accumulated." This court in peior holdings has determined that these allegations are without legal merit. Finding Hardin's claim to have no conceivable foundation in fact or law we dismiss the appeal. See Windsor v. Pan American Airways, 744 F.2d 1187 (5th Cir. 1984).

Appeal DISMISSED.

APPENDIX A-2

EXHIBIT A

NO. 12,010

IN THE MATTER OF THE MARRIAGE OF JOAN MURLE HARDIN AND LAVOYD WAYNE (BILL) HARDIN, AND IN THE INTEREST OF RODNEY BILL HARDIN, A MINOR CHILD	IN THE DISTRICT COURT OF COMANCHE COUNTY, TEXAS 52nd JUDICIAL DISTRICT

ORIGINAL ANSWER OF RESPONDENT, LAVOYD WAYNE (BILL) HARDIN

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Respondent in the above Cause, Lavoyd Wayne (Bill) Hardin, and makes this Answer to the Original Petition for Divorce filed herein under the styled and numbered proceeding set out first above.

(1)

This Respondent makes answer and appearance herein, by requesting upon final hearing of this Cause that all matters in controversy which are necessary to entry of Judgment herein be proved to the satisfaction of the Court by a preponderance of the evidence or full and satisfactory evidence as may be required by law.

WHEREFORE, PREMISES CONSIDERED, this Respondent prays for relief as stated above.

Respectfully submitted,

CAMPBELL AND CAMPBELL
Box 649
Hamilton, Texas 76531

by ANDREW CAMPBELL
Attorney for Respondent,
Lavoyd Wayne (Bill) Hardin

FILED December 15, 1975, by Ruth Page, District Clerk,
Comanche County, Texas

EXHIBIT B

NO. 12,551

JOAN MURLE HARDIN	§	IN THE 220th JUDICIAL
	§	
VS.	§	DISTRICT COURT OF
	§	
LAVOYD WAYNE HARDIN	§	COMANCHE COUNTY, TX

* *

EXERPT – STATEMENT OF FACTS

* *

Before The Honorable Andrew Campbell, Presiding Judge

* *

APPEARANCES:

HON. KEITH WOODLEY, of the law firm of Sudderth, Woodley and Dudley, 109 West Grand Avenue, Comanche, Texas,

For the Plaintiff.

HON. JIM PARKER, Attorney at Law, P. O. Box 762, Comanche, Texas,

For the Defendant.

* *

BE IT REMEMBERED that on the 2nd day of November, 1978, the same being one of the regular days of the November, 1978 term of the 220th Judicial District Court of Comanche County, Texas, the above entitled and numbered cause was

called for trial, whereupon, the following proceedings were had, to-wit:

EXHIBIT C

No. 12,551

JOAN MURLE HARDIN	§	IN THE DISTRICT COURT
VS.	§	OF COMANCHE COUNTY,
LAVOYD WAYNE HARDIN, ET AL	§	TEXAS 220th JUDICIAL DISTRICT

ANSWER OF VETERANS LAND BOARD OF THE STATE OF TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Veterans Land Board of the State of Texas, and represents unto the Court as follows:

This Defendant is the owner of the land involved herein and is not a party to the note or deed of trust referred to in Plaintiff's petition. This Board sold the land to a veteran under the Veterans Land Program and presumeably the note and lien in question were executed by the veteran. At the most, said note and lien will be a matter between said veteran and the mortgagee, and this Board is not involved.

WHEREFORE, said Board prays that its interest be fully protected and that no judgment be awarded against it and that it go hence and recover its costs.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

AUSTEN H. FURSE
Assistant Attorney General

Signed by: J. ARTHUR SANDLIN
Assistant Attorney General

ATTORNEYS FOR VETERANS LAND
BOARD OF THE STATE OF TEXAS

Filed August 14, 1978 by Ruth Page, District Clerk,
Comanche County, Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer of Veterans Land Board of the State of Texas has been mailed by First Class Mail, Postage Prepaid, on this the 11th day of August, 1978, to Mr. Ben D. Sudderth, P.O. Box 89, Comanche, Texas 76442, attorney for Plaintiff.

Signed by J. ARTHUR SANDLIN.

EXHIBIT D

Lavoyd Wayne HARDIN, Appellant,

v.

Joan Murle HARDIN, Appellee.

No. 5313.

Court of Civil Appeals of Texas,
Eastland.

July 5, 1979.

Rehearing Denied July 26, 1979.

Holder of promissory note sued her former husband on the note. The 220th District Court, Comanche County, Andrew Campbell, J., entered judgment in favor of holder, and appeal was taken. The Court of Civil Appeals, McCloud, C. J., held that where objection to proposed amended answer failed to assert that such amendment would operate as a surprise to plaintiff and where there was no showing of surprise, trial court abused its discretion in refusing to grant leave to file amended answer on date of trial.

Reversed and remanded.

Pleading • 236(2)

Where objection to proposed amended answer failed to assert that such amendment would operate as a surprise to

plaintiff and where there was no showing of surprise, trial court abused its discretion in refusing to grant leave to file amended answer on date of trial. Rules of Civil Procedure, rules 63, 419.

Jim Parker, Comanche, for appellant

Keith Woodley, Sudderth, Woodley & Dudley, Comanche, for appellee.

McCLOUD, Chief Justice.

Plaintiff, Joan Murle Hardin, sued her former husband, Lavoyd Wayne Hardin, on a promissory note in the original principal sum of $25,000. On the date set for trial, defendant attempted to file an amended answer containing several affirmative defenses. The court denied defendant leave to file the amended pleading. The case proceeded to trial, and the court entered judgment for plaintiff for $23,500 plus interest and attorney's fees. The court also ordered foreclosure of a deed of trust lien, securing the note, on property owned by defendant. Defendant has appealed. We reverse and remand.

Defendant filed a pro se answer on July 28, 1978. The case was set for trial for October 20, 1978. Defendant employed an attorney on October 18, 1978. The attorney on that

date filed a motion for continuance which was granted continuing the case until October 27, 1978. On October 27, 1978, the attorney filed a second motion which was granted continuing the case until November 2, 1978. On November 2, 1978, defendant and his attorney were present for trial and at that time attempted to file an answer amending the original handwritten "answer" filed by defendant. The court refused to grant leave to file the amended pleading.

Defendant states in his brief that the continuance granted by the court on October 27, 1978, continuing the case to November 2, 1978, was for the "purpose of filing pleadings." This statement is not challenged by appellee. Tex.R.Civ.P.419. Defendant points out that there are only six days between October 27 and November 2.

Tex.R.Civ.P. 63 provides:

> Parties may amend their pleadings, file suggestions of death and make representative parties, and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to operate as a surprise to the opposite party; provided, that any amendment offered for filing within seven days of the date of trial or thereafter, or after

such time as may be ordered by the judge under Rule 166, shall be filed only after leave of the judge is obtained, *which leave shall be granted by the judge unless there is a showing that such amendment will operate as a surprise to the opposite party.* (Emphasis added)

The rule clearly requires that the party opposing an amendment show that such amendment will operate as a "surprise" to him. Plaintiff's only objection to the tendered amendment was that it had not "been filed within the seven day rule." He made no objection, as required by Rule 63, that the proposed amended answer would "operate as a surprise" to him. There is no "showing" in the record that the amendment would operate as a surprise. The record will not support an implied finding by the trial court that the amendment would operate as a surprise. There are several cases holding that it is not an abuse of discretion to deny leave to file an amendment on the day set for trial. In those cases, however, there was an objection that the amendment would operate as a surprise. *Box v. Associates Investment Company*, 389 S.W.2d 687 (Tex. Civ.App.–Dallas 1965, no writ); *Roeber v. DuBose*, 510 S.W.2d 126 (Tex.Civ.App.–Corpus Christi 1974, no writ). No such objection was made in the instant case. Also, this is not a case

where the transcript merely shows the amendment was tendered and refused. *Herrin Transportation Co. v. Parker,* 425 S.W.2d 876 (Tex.Civ.App.–Houston (1st Dist.) 1968, writ ref'd n. r. e.); *Patino v. Texas Employers Insurance Association,* 491 S.W.2d 754 (Tex.Civ.App.–Austin 1973, writ ref'd n. r. e.). The statement of facts in the instant case reflects clearly the circumstances surrounding the tendered amendment and the objections thereto.

We hold that the trial court, since the objection failed to assert surprise and there is no showing of surprise, abused its discretion in not granting leave to file the amended answer. See *Vermillion v. Haynes,* 147 Tex. 359, 215 S.W.2d 605 (1948).

Judgement of the trial court is reversed, and the cause is remanded for a new trial.

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
LAVOYD WAYNE "BILL" HARDIN	§	CASE NO.
SS #454-44-9464,	§	480-00513
aka BILL HARDIN	§	Chapter 13
Debtor	§	

PROOF OF CLAIM
OF VETERANS LAND BOARD OF TEXAS

The Veterans Land Board of Texas, established under Article III, Section 49-b of the Constitution of Texas, acting herein through Ralph T. Aldave, Assistant Attorney General of the State of Texas, who resides in Austin, Texas, as agent and attorney for Claimant, makes this Proof of Claim in behalf of Claimant.

The Bankrupt was, at the time of the filing of the petition initiating this case, and still is, indebted to this Claimant in the principal sum of $950.40, together with interest of $15.08 to October 31, 1980, and interest of $.07 per day and -0- per day penalty from that date until paid. The total amount due this Claimant, as of the time that Bankrupt filed for bankruptcy, is $965.48.

Acting under the Texas Veterans Land Program, Claimant

sold to Bankrupt, on a long-term Contract of Sale and Purchase, the real property described therein. Under such contract, Claimant retains ownership of such property until the purchase price is paid in full. Copy of such contract is attached hereto.

No judgment has been rendered on this claim.

The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

This claim is not subject to any setoff or counterclaim.

The security interest of Claimant is that it owns said land until said purchase price is paid in full under terms of the attached contract.

DATED this the 6th day of March, 1981.

Respectfully submitted,

MARK WHITE
Attorney General of Texas

JAMES R. MEYERS
Assistant Attorney General

CARL E. GLAZE
Assistant Attorney General

Signed by RALPH T. ALDAVE
Assistant Attorney General
Bar ID #00979600

P. O. Box 12548
Capitol Station
Austin, Texas 78711
Ph. 512-479-8191

ATTORNEY FOR CLAIMANT
VETERANS LAND BOARD
OF TEXAS

EXHIBIT F

BANKRUPTCY COURT

Transcript dated March 3, 1982

PROCEEDINGS

Page 3, lines 6 through 8:

THE COURT: The last matter is the hearing on confirmation of the proposed plan of debt adjustment of Lvaoyd Wayne Bill Hardin in the Chapter XIII Case Number 4-80-00513.

I've ruled that Mr. Hardin may in his plan provide for curing the default on certain notes executed to Mrs. Hardin.

Page 84, line 25 through page 85, lines 1 & 2:

His only alternative – He does have an alternative, and that is to sell the property and pay the indebtedness off.

EXHIBIT G

ATTENTION ASSIGNEE: IT IS THE RESPONSIBILITY OF THE ASSIGNEE TO SATISFY HIMSELF AS TO THE CONDITION OF THE TITLE FROM THE TIME OF THE ORIGINAL VETERANS PURCHASE TO THE PRESENT TIME

ASSIGNMENT OF CONTRACT OF VETERANS LAND BOARD CONTRACT OF SALE AND PURCHASE 3096

4970 (To Be Submitted in Duplicate)

STATE OF TEXAS

COUNTY OF ERATH/COMANCHE

WHEREAS, LAVOYD W. HARDIN of Comanche County, Texas, hereinafter called Assignor, whether one or more, and J. A. HARDIN, hereinafter called Assignee, whether one or more, whose date(s) of birth, respectively, is (are) 11-7-43 and whose mailing address is Route 1, DeLeon, TX 76444 desire to make and accept an assignment of that certain Contract of Sale and Purchase dated 9-20-55 recorded in Vol. 351 and 284, Page(s) 406 and 317, of the Deed Records of Erath County and Comanche County, Texas, to which instrument(s) and the record thereof reference is here made for all legal and pertinent purposes; and,

WHEREAS, the parties hereto agree and understand that

this Assignment is subject to and is governed by the Provisions of Acts 51st Legislature, R. S. 1949, Ch. 318, as amended, and the Rules and Regulations of the Veterans Land Board of the State of Texas, and shall not be effective until approved by the Chairman or Acting Chairman of the Veterans' Land Baord;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, the Assignor, for and in consideration of Ten and no/100 ($10.00) Dollars, and other good and valuable consideration, in hand paid by the Assignee, the receipt of which is hereby acknowledged and confessed, and for the payment of which no right of lien, express or implied, is hereby retained or shall exist, does hereby assign, transfer and convey unto the said Assignee the above referenced Contract of Sale and Purchase and all of the right, title and interest of the said Assignor in and to the tract of land described in said Contract of Sale and Purchase except as may be indicated hereinabove;

TO HAVE AND TO HOLD the same unto the said Assignee, his heirs, executors, administrators and assigns forever, subject, however, to the terms, conditions and stipulations embodied in said Contract of Sale and Purchase:

AND, the Assignee does hereby accept the assignment of said Contract of Sale and Purchase and does hereby agree to assume all of the obligations provided for therein including the amendments thereto, if any, set out hereinbelow; And, the Assignee does hereby further agree to accept the assignment of said Contract of Sale and Purchase as a (veteran) (non-veteran) and to comply with and be bound by the Statute referred to hereinabove and the Rules and Regulations of the Veterans land Board of the State of Texas.

(TO APPLY ONLY IF ASSIGNEE IS TAKING THE ASSIGNMENT AS A NON-VETERAN)

Since the Assignee herein is not taking this assignment as a veteran, and in order to comply with the above referenced Act, as amended, in regard to the transfer and assignment of a Contract of Sale and Purchase to non-veterans, the Contract between the original veteran purchaser and the Board is amended as follows: The semi-annual installments set out in said Contract shall be changed to $138.18 One Hundred Thirty-eight and 18/100 ($138.18) due and payable semi-annually on or before the first day of each November and May thereafter until the total purchase price and interest have been paid. The

interest rate on the unpaid principal balance shall from the effective date of this assignment be ten (10) per cent per annum.

G.L.O.–V–61A–(1-82)

276-21800

* * * * * *

WITNESS OUR HANDS this the 24th day of August, A.D. 1983.

APPROVED: (Signed by)

GARRY MAURO, Chairman
Veterans Land Board
State of Texas
Austin, Texas

Signed by: Lavoyd W. Hardin, Assignor

and: J. A. Hardin, Assignee

DOUBLE ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF ERATH

Before me, the undersigned authority, on this day personally appeared LAVOYD W. HARDIN and J. A. HARDIN; both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this the 24th day of August, 1983.

Signed by: JOHN C. BOUCHER
Notary Public in and for
Erath County, Texas
Commission Expires: 1-10-84

SINGLE ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared Garry Mauro, Chairman, Veterans Land Board of the State of Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the 7th day of September, A.D. 1983.

Signed by: CHRIS ALONZO
Notary Public in and for
Travis County, Texas

G.L.O.–V–49–(1-82)

FILED FOR RECORD at 1:45 o'clock P.M. SEP. 12, 1983
by Pauline Chandler, Clerk, County Court, Erath County, TX

THE STATE OF TEXAS

COUNTY OF ERATH

I, PAULINE CHANDLER, Clerk of the County Court of Erath County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the original document as recorded in my office in Vol. 620 Page 657. Given under my hand and the seal of said court of office in Stephenville, Erath County, Texas, this 15th day of June A.D. 1984.

Pauline Chandler,
Clerk of the County Court, Erath County, Texas

Signed by: HERLINE WALTON, Deputy

EXHIBIT H

STATE OF TEXAS §
IN THE NAME OF THE STATE
COUNTY OF TRAVIS § OF TEXAS
0271 249

TO ALL TO WHOM THESE PRESENTS SHALL COME, KNOW YE:

WHEREAS, the VETERANS LAND BOARD OF THE STATE OF TEXAS has, in accordance with the provisions of the Texas Veterans Land Act, purchased a certain tract of land hereinafter described and has resold said land under Contract of Sale and Purchase to the GRANTEE hereinafter named; and

WHEREAS, said GRANTEE has complied with the requirements of said BOARD and with the provisions of said Act, and has paid the entire indebtedness due under said Contract of Sale and Purchase; and

WHEREAS, upon payment of the entire indebtedness due under said Contract of Sale and Purchase, said BOARD shall execute a deed to the original veteran purchaser or to the last assignee whose assignment has been approved by said BOARD; and

WHEREAS, the Chairman of said BOARD, or in his absence or illness the Acting Chairman of said BOARD, is fully

empowered and authorized to execute and deliver such deed; NOW, THEREFORE,

FOR AND IN CONSIDERATION of the sum of SIX THOUSAND, SEVEN HUNDRED FIFTY and NO/100 ($6,750.00) DOLLARS, cash in hand paid to said BOARD by said GRANTEE, the receipt of which is hereby acknowledged and confessed, said BOARD has GRANTED and CONVEYED, and by these presents does hereby GRANT and CONVEY, unto

J. A. HARDIN
Route 1, DeLeon, TX 76444

GRANTEE, all that certain lot, tract, or parcel of land more particularly described as

that 154.3 acre tract situated in the M. V. Robinson and the T. E. Ely Surveys, Comanche and Erath Counties, Texas, described by metes and bounds in the Warranty Deed to the Veterans Land Board dated September 22, 1955, recorded in Vol. 284, page 316, Comanche County, Texas and recorded in Vol. 351, page 404, Erath County, Texas; and also further described in that Contract of Sale dated September 20, 1955, recorded in Vol. 284, page 317, Comanche County, Texas and recorded in Vol. 351, page 406, Erath County, Texas; and assigned on August 24, 1983 to GRANTEE herein.

This conveyance is made SUBJECT TO any reservations, conditions or agreements set out in the instruments cited above.

HEREBY relinquishing unto said GRANTEE, his heirs and assigns, forever, all of said BOARD'S right, title, and interest in and to said land;

BUT IT IS AGREED AND UNDERSTOOD that in the event that a patented survey of which the above described tract of land is a part contains excess acreage, or that unsurveyed school land contained within the boundaries of the above-described tract of land, said BOARD by the execution of this deed does not purport to grant or convey any right, title, or interest in and to such excess acreage or unsurveyed school land.

WITNESS MY HAND AND SEAL OF THE VETERANS LAND BOARD OF THE STATE OF TEXAS, this the 6th day of January, 1984.

Signed by: GARRY MAURO, Chairman
VETERANS LAND BOARD
OF THE STATE OF TEXAS

Filed 20th day of January, 1984 at 4:00 o'clock P.M.

Recorded 23rd day of January, 1984 at 9:00 o'clock A.M.

BETTY CONWAY, COUNTY CLERK

Signed by: Billie R. Vineyard, Deputy

CLERK'S CERTIFICATE

THE STATE OF TEXAS §
§
COUNTY OF COMANCHE §

I, Betty Conway, Clerk of the County Court of Comanche County, Texas, do hereby certify that the above and foregoing is a true and correct copy of

1. Deed

as same appears of record in volume 570, Page 206 of the Deed Records of Comanche County, Texas.

Given under my hand and seal of office in the City of Comanche, Comanche County, Texas, this 15th day of June A.D., 1984.

BETTY CONWAY, County Clerk
Comanche County, Texas

by: Billie R. Vineyard, Deputy

EXHIBIT I

July 6, 1983

DeLeon Free Press
100 N. Texas
DeLeon, Texas 76444

Comanche Chief
203 W. Grand
Comanche, Texas 76442

Dear Sirs:

Please run the following ad in your classified section for six weeks or until you are advised to cancel it, which ever occurs first.

FOR SALE 154 acres within five miles of DeLeon less than 1/4 miles from Highway 16. This is a Court Ordered sale. Interested persons should address inquiry to: Land P.O.Box 89, Comanche, Texas 76442 persons making inquiry will be contacted regarding inspection of the property and making of a bid.

Thank you.

Sincerely,

BEN D. SUDDERTH, ATTORNEY
BDS/lg

EXHIBIT J

UNITED STATES DISTRICT COURT

Transcript dated November 3, 1983

Page 20, lines 3 through 23:

MR. HARDIN: Well, that hearing we had on the homestead, well, St. Clair was going the farm was homestead, which I was wanting to go the farm is my business homestead. The house and lot in DeLeon is my homestead, but the farm is my business homestead. And, of course, the Texas constitution covers both of them just alike. They are both exempt from forced sale.

THE COURT: I haven't looked at the statutes in some time, but I believe there is some difference in a business homestead and a farm being a business homestead. I mean, these lawyers here are more up on that, but I believe there's a complete – I believe there is a difference in – if you are in a grocery business down here, well, that's a business. You can have a business homestead.

MR. HARDIN: But if farming is not a business, well, I'm in the wrong business.

THE COURT: Well, I think there's different statutes that

are applicable or different law that's applicable from a business homestead, and I know these laws have been changed, and I haven't looked at this in many a day. So your lawyers are a little more up on this.

EXHIBIT K

UNITED STATES BANKRUPTCY COURT

PROCEEDINGS

March 9, 1984

11:40 a.m.

Transcript page 4, lines 12 through 25 and

page 5, lines 1 through 25:

THE COURT: All right. Mr. Hardin, are you here representing yourself?

MR. HARDIN: No, sir. I was – I was wanting to get an extension. I have an attorney hired but he had other commitments today and couldn't make it here.

THE COURT: Who's your attorney?

MR. HARDIN: He was Ralph Perry Miller. I believe that's his name.

THE COURT: Did you make Mr. Colvin aware of the fact that you had retained counsel?

MR. HARDIN: Yes. Out – out in the hall.

THE COURT: I mean prior to today?

MR. HARDIN: No. I just got him yesterday.

THE COURT: Where does Mr. Perry live?

MR. HARDIN: He lives in Dallas.

THE COURT: Do you have his phone number?

MR. HARDIN: I might have. I was aiming to bring it.

THE COURT: Mr. Colvin?

MR. COLVIN: Your Honor, the particular Defendant in this proceeding, J. A. Hardin, and he is present in the courtroom. I do not know what interest Mr. Lavoyd Wayne "Bill" Hardin has in the proceeding where a continuance would be appropriate for him to request. The relief prayed for originally was against the Veterans Land Board, which the Court granted, and Mr. J. A. Hardin.

THE COURT: All right. Mr. J. A. Hardin, are you here?

MR. J. A. HARDIN: Yes, sir.

THE COURT: Please come forward.

Do you have an attorney? You may stand there.

Do you have an attorney?

MR. J. A. HARDIN: No, sir. I live in Tennessee and I just got served these papers last Friday afternoon, and I consulted with my attorney in Tennessee Monday, and he told me to find an attorney over here to represent me, and we have found one but the schedule, you know, being like it is, they could not fit – he told us he couldn't fit any – in his schedule

this morning.

THE COURT: I'm going to hear the evidence from the Trustee.

EXHIBIT L

UNITED STATES DISTRICT COURT

Transcript dated March 9, 1984

Page 10, lines 3 through 12:

Now, as I said, I'm going to hold this hearing in abeyance until I see what you are going to do concerning this matter.

But I would – I know you don't want to have any problems about this, and certainly it wouldn't be in your best interest. I mean, you know, I don't want to hold anybody in contempt of court or contempt of orders and so forth. You know, there's civil contempt, there's criminal contempt, and on a matter of this type, you could be placed in jail until you comply with the Court's order, and that is, signing the deed. I'm just advising you what the consequences can be.

Page 10, lines 18 through 24:

So you ought to get with Mr. Colvin and Mr. McMaster over here and you all work this out because all you are going to do – it is costing you time and money and expense and inconvenience and could result in some serious consequences. And, if you don't have an attorney and want to talk to an attorney, I can understand that, but you need to get – of

course, Mr. Colvin is the attorney representing the trustee

Page 16, lines 2 through 20:

THE COURT: Oh, no. Under the magistrate's – under – you have got to convey it to him. I mean, under this order that Judge McClinchey – I mean, Judge McConnell has entered, you have got to convey it to the trustee in bankruptcy. He just holds it for the Court. But you can't go sell it to Mr. Joe Doe out here or something like that or incumber it or anything of that kind.

MR. J. A. HARDIN: You mentioned mortgage. Could I pay off what is against the place?

MR. COLVIN: Your Honor, he cannot. All he can do is buy it. The property is within the jurisdiction of the Court.

THE COURT: It is in the court. That is all subject to the Court. Anything that is going to be done with this piece of property has to be approved by the Court.

Now, that's the reason you need to talk to the trustee in bankruptcy. You can buy the piece of property. You can't buy it for what is against it, I'm sure, because it is worth more than that. But you are going to have – I mean, all the full debts and everything.

EXHIBIT M

UNITED STATES BANKRUPTCY COURT

Transcript dated May 25, 1984

Page 19, lines 24 & 25, Page 20, lines 1 through 13:

CROSS-EXAMINATION

BY MR. HARDIN:

Q. Okay. Mr. McMaster, did you ever receive a phone call from Lavoyd Wayne "Bill" Hardin wanting to pay off this indebtedness?

A. I don't know whether I did or not.

Q. Well, I do, and you did.

A. Well, why don't you testify to that then?

Q. And – and did you tell him how much it was, or did he ask?

A. Told you that I don't recall such a phone call, Mr. Hardin.

MR. HARDIN: Well, okay. I'd like for the record to show that I did call him and wanted to know what, to the penny, it was to pay off this indebtedness. I was wanting to pay it off, and he would not tell me.

Page 21, lines 7 through 17:

THE COURT: All right. Mr. Hardin, is there any other evidence you wish to offer?

MR. HARDIN: Well, J. A. Hardin also called Mr. McMaster wanting to pay it off, but he wouldn't accept it. He also called Joe Calvin (sic) wanting to pay it off, and he said, We will take the money and the deed but we will not take the money without the deed. So this was – this has tried to be paid off two or three different times completely, and the Trustee would not accept it. The Trustee's attorney would not accept it,

Page 21, lines 22 through 25:

I tried to pay it off, but now everything – the validity of that deed is on appeal in New Orleans, and also the homestead and also the Chapter 7. It's all on appeal. I got the case numbers.

EXHIBIT N

UNITED STATES BANKRUPTCY COURT

Transcript dated June 28, 1985

Page 13, lines 1 through 25, Page 14, line 1:

MR. HARDIN, PRO SE: Okay. Well, I'd like to call Mr. McMaster to the stand.

THE COURT: What do you intend to ask Mr. McMaster about?

MR. HARDIN, PRO SE: If he had received a phone call from me wanting to pay off the indebtedness.

THE COURT: Can you explain to me what that has to do with Mr. Newbern's request for attorney's fees?

MR. HARDIN, PRO SE: Well, see, I sold this property to J. A. Hardin for the main purpose to stay out of court, to pay the court off, to pay the Trustee off, to pay the attorneys off. I sold the property. I phoned the Trustee to pay it off every bit of it to the penny. He would not accept it. I phoned my ex-wife and she would not accept it.

THE COURT: Well, I think we can speed this matter up. Mr. McMaster, will you stipulate you received a phone call from Mr. Hardin?

MR. McMASTER: I received probably more than one phone call from him over the period of time involved, you know, since I became Trustee. Yes, sir.

THE COURT: Do you remember a phone call that had something to do with what he's talking about?

MR. McMASTER: Yes, sir, I do.

THE COURT: You'll stipulate you received such a phone call?

MR. McMASTER: Yes, sir. I received such a phone call.

EXHIBIT O

The following is a personal affidavit from J. A. Hardin:

"I bought a piece of property from Lavoyd Wayne "Bill" Hardin on 24th day of August, 1983. I paid off the remaining amount of the Veterans Land Board Contract, and received the title January 6, 1984, and was recorded in Erath & Comanche Counties. I was served with papers to appear in court at Fort Worth on March 9, 1984. My attorney in Tennessee told me I would have to get a Texas attorney to represent me. I told this to the judge and told me I would not need one. He told me if I did not sign the deed over I could be found in contempt of court and be put in jail. I have a wife and four small children. It upset them. After the hearing the attorneys got me outside the courtroom and told me if I did not sign the deed they would assure me that I would be put in jail until I decided to sign the deed.

I would have liked to have kept the farm as I was thinking about building a house on it. I asked the judge if I could pay off what was against the place and keep it. The attorney told me I could not.

signed this 27 day of December, 1984

by J. A. HARDIN

EXHIBIT P

No. 1897 WARRANTY DEED

THE STATE OF TEXAS,)
KNOW ALL MEN BY THESE
COUNTY OF COMANCHE)
PRESENTS: That we, Lloyd L. Hardin and wife Vivian Hardin of the County of Comanche, State of Texas for and in consideration of the sum of Six Thousand Seven Hundred Fifty and No/100 - - - DOLLARS to us in hand paid by The Veterans' Land Board of Texas, receipt of which is hereby acknowledged and confessed; RECEIVED SEP 1 1955 GENERAL LAND OFFICE have Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey unto the said The Veterans' Land Board of Texas of the County of Travis, State of Texas all that certain lot, tract or parcel of land lying and being situated in the Counties of Comanche and Erath, in the State of Texas, out of the M. V. Robinson and the T. E. Ely Surveys and being the same land which V. V. Bell and wife Addie Bell conveyed to Lloyd L. Hardin by deed dated November 26, 1946, and duly recorded in Vol. 343, Page 633, Deed Records of Erath County, Texas, to which reference is here made and said land being described by metes and bounds according to survey made on the ground

by Ernest Fletes, County Surveyor of Freestone County, on May 26, 1955, in two tracts as follows: FIRST TRACT: BEGINNING at a stake in South Railroad Row Line & West Line of M. V. Robinson Survey; THENCE S. 18 W. 446.7 vrs.; THENCE S. 19 W. 677 varas to a corner fence post at the N.W. corner of the M. M. Dixon land for the S.W. corner of this tract; THENCE S. 71 E. 668 varas following the North line of the M. M. Dixon land and the South line of the T. E. Ely 80 acres (Southern 80 acres) to a stake in channel of Flat Creek, the S.E. corner of a tract of 77 acres conveyed by V. V. Bell et ux Addie Bell to Lloyd L. Hardin as per deed of record in Vol. 343, Page 633 of the Erath County Deed Records.

THENCE following the meanders of Flat creek as follows:

N. 12 W.	118 vrs. a stake
N. 25 E.	76 vrs. a stake
N. 43 E.	105 vrs. a stake
N. 42½ E.	32 vrs. a stake
N. 69 deg. 45' E.	19 vrs. a stake
N. 54 E.	94 vrs. a stake
N. 51 W.	62 vrs. a stake
N. 26 E.	15 vrs. a stake
N. 22 W.	50 vrs. a stake
N. 4 E.	60 vrs. a stake
N. 54 E.	82 vrs. a stake
N. 16 deg. 45' E.	22 vrs. a stake
N. 9 deg. 30' W.	58 vrs. the S.E. corner of the Robinson Survey

THENCE N. 17 deg. 30' E. 299.8 vrs. a stake in South Rail-

road Row; THENCE N. 57 deg. 02 minutes W. 671.7 vrs. along South Railroad R.W. to place of beginning, containing 122.8 acres, more or less. SECOND TRACT: BEGINNING at a stake in North Railroad R. W. Line & West Line of M. V. Robinson Survey; THENCE N. 18 E. 195.5 vrs. to a stake; THENCE S. 70 E. 647 vrs. to a P. O. tree for N.E. Corner of M. V. Robinson Survey; THENCE S. 17 degrees 30 minutes W. 344.5 varas to stake in North Railroad R. W. line; THENCE Along North Railroad Row Line N. 57 degrees 02 minutes W. 671.7 varas to place of beginning; containing 31.5 acres, more or less. MINERAL RESERVATIONS: The grantors herein, Lloyd L. Hardin and wife Vivian Hardin, own an undivided 73.250/146.5 interest in and to the oil, gas, and minerals in and to the above-described tracts of land, together with the exclusive right to lease the entire premises herein conveyed for oil, gas, and mineral purposes, without the joinder and consent of the other mineral and/or royalty owners. All of the grantors' said undivided interest in and to the oil, gas, and minerals, together with grantors' exclusive right to lease said premises for oil, gas, and mineral purposes, is hereby expressly conveyed unto The Veterans' Land Board of Texas, its successors and

assigns forever, no part of same being reserved by the said grantors. The remainder of the oil, gas, and minerals in and to the tracts of land herein conveyed is held and vested as follows: An undivided 14.125/146.5 interest in the oil, gas, and minerals is owned by H. K. Galloway and wife Viola Galloway; an undivided 22.500/146.5 interest in the oil, gas, and minerals is owned by Edgar Galloway and wife Vivian Galloway; An undivided 36.625/146.5 interest in the non-participating royalty only in and to the oil, gas, and minerals is owned by S. C. Price and wife Lillie Price. The above-described mineral interests were created in conveyances and/or reservations executed, delivered, and recorded prior to June 6, 1949, as follows: (1) Mineral deed from M. E. Galloway and wife H. K. Galloway to H. K. Galloway dated February 5, 1925, recorded in Vol. 239, Page 186, Deed Records of Erath County, Texas. (2) Warranty deed from M. E. Galloway et ux to N. B. Benson, dated February 5, 1926, recorded in Vol. 209, Page 171, Deed Records of Erath County, Texas. (3) Warranty deed from N. B. Benson et ux to S. C. Price, dated February 10, 1928, recorded in Vol. 211, Page 247, Deed Records of Erath County, Texas. (4) Warranty deed from S. C. Price et ux to E. O. Bell,

dated April 12, 1945, recorded in Vol. 286, Page 40, Deed Records of Erath County, Texas. (5) Warranty deed from E. O. Bell et ux to V. V. Bell, dated October 8, 1945, recorded in Vol. 287, Page 584, Deed Records of Erath County, Texas. (6) Warranty deed from V. V. Bell et ux to Lloyd L. Hardin, dated November 26, 1946, recorded in Vol. 343, Page 633, Deed Records of Erath County, Texas. (7) Declaration of Mineral Interest executed between H. K. Galloway and wife Viola Galloway, Edgar Galloway and wife Aurelia Galloway, Lloyd L. Hardin and wife Vivian Hardin, and S. C. Price and wife Lillie Price, dated September 11, 1948, and recorded in Vol. 348, Page 329, Deed Records of Erath County, Texas. TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the said The Veterans' Land Board of Texas, its successors and assigns forever; and we do hereby bind ourselves, our heirs, executors and administrators, to Warrant and Forever Defend all and singular the said premises unto the said The Veterans' Land Board of Texas, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

Witness our hands at DeLeon, Texas this 22nd day of September, A.D. 1955.

($7.70 R.S.) Loyd L Hardin

Vivian Hardin

THE STATE OF TEXAS,)
COUNTY OF COMANCHE) BEFORE ME, a Notary Public, in and for Comanche County, Texas, on this day personally appeared Lloyd L. Hardin and Vivian Hardin, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Vivian Hardin, wife of the said Lloyd L. Hardin having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Vivian Hardin acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it. GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 22nd day of September, A.D. 1955.

(Seal) Frederick G. Harmon
Notary Public, Comanche
County, Texas.

Filed for record on the 1st day of October, A.D. 1955 at 9:00 o'clock A.M.

Recorded on the 4th day of October, A.D. 1955 at 1:20 o'clock P.M.

Signed by LINDA RIPPETOE, Deputy

Hazel Streety, County Clerk.

CLERK'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF COMANCHE)

I, Betty Conway, Clerk of the County Court of Comanche County, Texas, do hereby certify that the above and foregoing is a true and correct copy of

1. Warranty Deed

as same appears of record in volume 284, Page 316 of the Deed Records of Comanche County, Texas

Given under my hand and seal of office in the City of Comanche, Comanche County, Texas, this 3rd day of June A.D., 1986.

BETTY CONWAY, County Clerk
Comanche County, Texas

Signed by VIANN MELOT, Deputy

The Business Homestead

The head of a house who has a profession or business can have a business homestead, which may be part of the residence or separate from it. The business homestead is likewise exempted from forced sale. The premises claimed as a business homestead must be reasonably suited to the transaction of the business or profession. Therefore, one may have a rural homestead where he and his wife and children live, and simultaneously have a business homestead in town. Conversely, he may have an urban homestead where he and his wife and children live, and also have a rural business homestead.

Along with the business homestead, the equipment and machines necessary for carrying on the business or profession of the head of the family are exempt from forced sale. Moreover, the head of the house may carry on more than one profession or business in the business homestead, and the appurtenances of each would be exempt. The head of the house cannot have two different businesses or professions in two different places and claim both places as business homesteads. He can have the exemptions for only one business homestead.

Tools of any lawful trade when they are used by the owner are exempt. Even though the owner may cease using his trade tools temporarily, such as when he goes on vacation, this does not change the exempt status of the tools.

It is this state's policy that a man must be protected in the ownership and use of his home and in his means of making a living for himself and his family.

Exerpt from *TEXAS LAW in layman's language*
by Ralph Walton

CERTIFICATION OF SERVICE

I, Lavoyd Wayne "Bill" Hardin certify under the penalty of perjury that the foregoing joint Appendix was mailed by First Class Mail to Gilbert & Colvin, Respondent and every interested party mention in Writ of Certiorari.

Signed this 8th day of August, 1986.

Lavoyd Wayne "Bill" Hardin

Lavoyd Wayne "Bill" Hardin

Route 1, Box 127A

DeLeon, Texas 76444

Telephone: (817) 893-2686